(33,773, 33,774)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 464

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, APPELLANT,

vs.

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND.

No. 465

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND, APPELLANTS,

vs.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE.

APPEALS FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND

INDEX

	Page
Record from circuit court No. 2 of Baltimore city	1
Docket entries	3
Bill of complaint and order for injunction	5
Exhibit A—Opinion of Public Service Commission	14
Order of Public Service Commission	57

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 24, 1928

Page

Answer 60
Opinion, Ulman, J. 65
Decree 85
Order for appeal 87
Order for cross-appeal 88
Proceedings before Public Service Commission 89
Application for a modification of certain orders and for a change in rates and fares, No. 2648 89
Application of Halethorpe Community Association, No. 2648 99
Order setting hearing of application for a flat rate 113
Opinion in rate cases No. 1568 and No. 1583 114
Order in rate cases No. 1568 and No. 1583 149
Opinion in rate case No. 1682, September 30, 1919 152
Order in rate case No. 1682, September 30, 1919 216
Supplementary opinion in rate case No. 1682, November 29, 1919 220
Supplementary order in rate case No. 1682, November 29, 1919 232
Opinion in rate case No. 1682, December 31, 1919 234
Order in rate case No. 1682, December 31, 1919 244
Opinion in rate case No. 1682, May 26, 1924 248
Dissenting opinion, Harper, C., in rate case No. 1682 260
Order in rate case No. 1682, May 26, 1924 274
Opinion in rate case No. 533, March 9, 1926 279
Dissenting opinion, Harper, C., in rate case No. 533 313
Order in rate case No. 533, March 9, 1926 335
Opinion in rate case No. 533, February 1, 1928 338
Order in rate case No. 533, February 1, 1928 356
Statement of evidence in case No. 2648 359
Testimony of C. D. Emmons 361
H. Carl Wolf 507
Allen G. Hoyt 531
John J. Nelligan 544
H. Carl Wolf 547
Charles Nodder 554
C. D. Emmons 578
Carville D. Benson 620
C. D. Emmons 633
Bancroft Hill 784
Luther R. Nash 836
W. Findlay Downs 857
Bancroft Hill 874
H. Carl Wolf 881
Charles Nodder 929
H. Carl Wolf 974
Charles Nodder 1019
John O. Benson 1052
Howard J. Geyer 1078
Christopher R. Waltenscheidt 1081
G. Judd Stevens 1082

Page.
Testimony of Emory A. Kelbaugh..... 1083
Oregon R. Bensen, Jr..... 1085
Robert Thomas Alinson..... 1086
Joshua S. Hull..... 1088
Mrs. J. W. Wilson..... 1090
Howard T. Dyott..... 1092
Charles C. Rittenhouse..... 1093
J. Henry Strohmeyer..... 1095
Mrs. William H. Trescott..... 1098
Mrs. Agnes Stromberg..... 1100
Mrs. J. O'Donnell..... 1101
C. D. Emmons..... 1104
James C. Fenhagen..... 1142
Dr. Jacob H. Hollander..... 1161
C. D. Emmons..... 1202
H. Carl Wolf..... 1247
Evidence from records in former cases before Public Service Commission..... 1253
Testimony of Allen G. Hoyt..... 1253
Testimony of Fred S. Burroughs..... 1334
People's Counsel's Exhibit No. 13..... 1348
Cost of reproduction, property, and prices, as of December 31, 1913..... 1350
Summary and detail of estimated cost when built..... 1352
Property and income..... 1354
Adjustment of gross income..... 1355
Summary of adjusted net additions to property..... 1357
Adjusted gross additions, retirements, and net additions..... 1358
Analysis of plant account..... 1368
Fixed capital, 1904 to 1911, inclusive..... 1371
Gross additions, retirements, and net additions to fixed capital..... 1372
Extraordinary expenditures account..... 1377
United Railway & Electric Company exhibits—List..... 1380
Nos. 1 and 1a—Decrease in passenger revenue..... 1386
Nos. 2 and 2a—Comparative statement of revenue passengers..... 1388
No. 3—Preliminary results of August 1912 vs. 1926..... 1390
No. 3a—Day-by-day comparisons..... 1391
No. 4—Receipts..... 1393
No. 5—Chart showing comparison of monthly net income for 1927 with years 1920-1926..... 1394
Nos. 6 and 6c—Income account, return received and rate of return, 1920 to 1926..... 1395
No. 7—Estimate of income for 1927..... 1399
No. 7b—Estimate of revenue passengers and passenger revenue for 1921..... 1400
No. 7c—Estimate of income for 1927..... 1401

Page

Nos. 8 and 8a—Annual shortages in net income..... 1402
No. 9—Amount of net income..... 1404
No. 10—Amount of gross income..... 1405
No. 11—Chart, revenue passengers, population, automobile licenses 1406
No. 12—Chart, total passengers, car miles..... 1407
Relative changes in car miles and in total passengers 1408
No. 13—Estimated losses due to zone extensions in June, 1924..... 1409
No. 14—Comparative statement of earnings and expenses, 1926 and 1923..... 1412
No. 15—Motormen and conductors' wages, 1913-1927.. 1413
No. 16—Wage rates, 1913 to 1927..... 1414
No. 17—Comparison operating costs..... 1417
No. 18—Average fare paid in large eastern cities..... 1418
No. 19—Estimated revenue passengers, operating expenses and net income for year 1928..... 1419
No. 20—Comparison of cost of living with car fares and wages in Baltimore..... 1420
No. 21—Report on sales, merchandise outlets, number of establishments, etc. 1421
No. 22—Estimates of income for 1928 at present rates of fare 1424
No. 23—Additions to and retirements from the valuation of Jan. 1, 1924..... 1425
No. 24—Estimate of net income..... 1428
No. 25—Report on depreciation..... 1429
No. 26—Comparison of daily averages of revenue passengers and change in rates of fare for Baltimore, St. Louis, and Cleveland..... 1439
No. 27—Revenue passengers, Charles St. Bus Line.... 1456
No. 27a—Number of passengers carried on the Charles St. route 1457
No. 27b—Passengers carried, Mt. Royal Ave Bus Line. 1458
No. 28—Chart, No. 23, No. 26, car lines, city section, revenue passengers 1459
No. 29—Chart showing indices and U. R. & E. Co. costs 1460
No. 30—Gallons of motor vehicle fuel sold..... 1461
No. 31—Cost of financing..... 1462
No. 32—Passenger receipts, day-by-day comparison, 1927 and 1926..... 1463
No. 33—Chart showing dwelling permits issued..... 1464
People's Counsel's Exhibits—List..... 1465
No. 1—Estimate of income for year 1927..... 1470
No. 2—Estimate of income for 1928 with a 10-cent cash fare 1471
No. 3—Yearly comparison of street car passengers and auto passengers..... 1472

Page.
No. 4—Ratio of the amount of outstanding securities and the basic value fixed by the Commission..... 1473
No. 5—Data on street railway operation in various cities for year 1926..... 1474
No. 6—Securities issued since 1910..... 1475
No. 7—Balance to surplus by years compared with common stock dividends..... 1476
No. 8—Comparison of cost of living with car fares and wages in Baltimore..... 1477
No. 9—Average decrease of daily receipts by days of the week, 1927..... 1478
No. 10—August report of industrial bureau, Baltimore Association of Commerce..... 1479
No. 11—Article from U. S. Daily, August 31, 1927..... 1495
No. 12—Income and surplus accounts, years 1920 to 1926 1496
No. 13—Comparison of net income for the first and last six months' periods of the years 1920 to 1926..... 1497
No. 14—Taxes paid for years 1923 to 1926, and estimated for 1927..... 1498
No. 15—Free tickets of all descriptions issued in 1926... 1501
No. 16—Effect on income account of issue of 3-year notes 1502
No. 17—Accident and damage accounts..... 1503
No. 18—Statement of approximate cost of painting cars 1504
No. 19—Effect of variation of fare on revenue passengers 1505
No. 20—Comparison of effect of fare changes on revenue passengers, Charles St. Bus Line..... 1507
No. 21—Revenue passengers carried during the first 10 months of 1927, compared with corresponding period of 1926, East Fayette bus route..... 1508
No. 22—Comparison of cost of living with car fares in Baltimore 1509
No. 23—Comparison between cost of living and fares, 1913 to 1927..... 1510
No. 24—Present fares in cities having a population of over 100,000 1511
No. 25—Comparison of results of street railway operation in 1926 in other cities..... 1517
No. 26—Probable trend of business in 1928 as affecting revenue 1518
No. 28—Article from Baltimore Sun, Oct. 19, 1927..... 1521
No. 29—Estimate of passenger revenue for 1928, assuming 1% increase, etc. 1522
No. 30—Average loading and transfer passengers on Hartford Road cars..... 1523
No. 31—Estimated passenger revenue for 1928 with 8c full fare and 5c county fare..... 1524

Page

No. 32—Estimate of net income and rate of return for 1928 1525
No. 33—Comparison of net income estimated for 1928 with tests applied by Commission in 1924..... 1526
No. 34—Estimate of earnings under fares shown by company exhibit No. 24..... 1527
No. 35—Estimate of earnings for years 1928-1930 based on company's estimate of future trends..... 1528
No. 36—Results of operations in 1927 compared to operations in 1922..... 1529
No. 37—Comparison of costs of superintendence in 1925 and 1926 1530
No. 38—Annual depreciation allowance equivalent to company's claims for condition of property as of December 31, 1923..... 1531
No. 39—Annual depreciation allowance equivalent to Commission's finding of condition of property as of December 31, 1923..... 1532
No. 40—Annual depreciation allowance based on percentages considered in valuation case No. 533..... 1533
No. 41—Operating revenues, expenses, etc., first six months of years 1926 and 1927..... 1534
No. 42—Depreciation..... 1546
No. 43—Accident and damage account, September 30, 1927 1550
No. 44—Property appraisal costs during period January 1, 1913 to September 30, 1927..... 1552
No. 45—Estimated revenue lost through the issuance of free tickets to employees and park concessionaires during 1926..... 1556
No. 46—Valuation as of December 31, 1923..... 1557
No. 47—Net return, average rate base, and percentag of rate of return for years 1924-1926..... 1590
No. 48—Investment in road and equipment as of December 31, 1923, and net additions thereto..... 1591
No. 49—Average rate of interest in indebtedness at September 30, 1927..... 1592
No. 50—Statement of notes outstanding September 30, 1927 1593
No. 51—Average weighted interest rates of securities authorized by Public Service Commission..... 1594
No. 52—Comparative consolidated general balance sheets 1595
No. 53—Results of operations under Sunday pass in Cincinnati, Ohio..... 1599
No. 54—Correspondence between E. D. Gilman and H. Carl Wolf..... 1600
No. 55—Value of service in 1927 compared to value found by Commission in January, 1919..... 1601
Halethorpe exhibits..... 1602
No. A—Comparative mileage chart..... 1604

Page

No. B—Tabulation of exhibit A..... 1605
No. C—Map showing location of end of first fare zone.. 1606
No. D—Comparative airline mileage chart..... 1607
No. E—One fare distance from Baltimore and Charles Sts., compared with total Halethorpe line two fare district 1608
No. F—List of manufacturers served by car line No. 3.. 1609
No. G—List of larger manufacturing concerns..... 1610
No. H—Average airline distance, etc. 1611
No. I—Comparative annual cost of street railway transportation from Halethorpe and twelve other City Suburban car lines..... 1612
No. J—Official guide map of Portland, Ore. 1613
No. K—Chart showing number of dwellings constructed before and after one fare extension to Dundack Junction 1614
Stipulation as to record on appeal..... 1615
Clerk's certificate..... 1620
Proceedings in Court of Appeals of Maryland..... 1621
Docket entries..... 1621
Decree 1621
Opinion, Offutt, J. 1622
Concurring opinion, Adkins, J. 1653
Dissenting opinion, Bond, C. J. 1655
Dissenting opinion, Parke, J..... 1656
Petition for appeal and order allowing same..... 1660
Assignments of error 1661
Bond on appeal (omitted in printing)..... 53
Citation and service (omitted in printing)..... 55
Petition for cross appeal and order allowing same..... 1668
Assignments of error..... 1672
Bond on cross appeal (omitted in printing)..... 64
Citation and service (omitted in printing)..... 66
Clerk's certificate (omitted in printing)..... 67
Stipulation as to printing record..... 1673
Statement of points to be relied upon, Case No. 464..... 1674
Statement of points to be relied upon, Case No. 465..... 1675

Page

Record from circuit court No. 2 of Baltimore City 1677
Docket entries 1679
Decree 1680
Supplemental bill of complaint 1681
Note re Plaintiff's Exhibit "A" 1690
Plaintiff's Exhibit "B"—Opinion and order of Public Service Commission of Maryland 1691
Answer to supplemental bill of complaint 1698
Proceedings before Public Service Commission of Maryland 1702
Petition 1702
Order setting cause 1705
Decree 1705
Appeal 1706
Stipulation re transcript of record 1707
Order of transmittal 1709
Clerk's certificate 1709
Docket entries 1711
Opinion, Offutt, J 1712
Decree 1716
Petition for appeal and order allowing same 1717
Assignments of error 1718
Bond on appeal ..... (omitted in printing) ..
Citation and service ..... (" " ") ..
Clerk's certificate ..... (" " ") ..
Statement of points to be relied upon and stipulation to print the entire record 1724

Petition for appeal and order allowing same, case No. 826 1727
Assignments of error 1732
Bond on appeal ..... (omitted in printing) ..
Citation and service ..... (" " ") ..
Clerk's certificate ..... (" " ") ..
Statement of points to be relied upon and stipulation as to printing. 1733

VOLUME I

TRANSCRIPT OF RECORD

FROM THE

CIRCUIT COURT NO. 2 OF BALTIMORE CITY

IN THE CASE OF

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

VS.

HAROLD E. WEST ET AL.,

TO THE

COURT OF APPEALS OF MARYLAND.

THOMAS J. TINGLEY,
RAYMOND S. WILLIAMS,
For Appellants.

HENRY H. WATERS,
VENABLE, BAETJER & HOWARD,
HAMAN, COOK, CHESNUT & MARKELL,
JOS. C. FRANCE,
For Appellee.

DOCKET ENTRIES.

Henry H. Waters
Venable, Baetjer and Howard
Haman, Cook, Chesnut & Markell
Jos. C. France

The United Railways and Electric Company of Baltimore.

No. 16060 A.

Thomas J. Tingley
Raymond S. Williams
and
Carville D. Benson
James K. Cullen

Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, Constituting The Public Service Commission of Maryland.

---

13 March, 1928—Bill of Complaint and to have the orders decreed null and void and set aside and for an Injunction, etc., (1) and plaintiff's Exhibit A (2) fd.

13 March, 1928—Subpoena Issued [(3) Summoned as marked].

13 March, 1928—Order of Court thereon directing defendants to show cause within twenty days after service of a copy of this order and Bill of Complaint (4) fd. Copy Issued [Served on defendants].

30 March, 1928—App. of Defendants by Thomas J. Tingley, Raymond S. Williams, Carville D. Benson and James K. Cullen and its Answer to Bill of Complaint (5) fd.

25 April, 1928—Plaintiff's Exhibits Vol. 1 (6), Vol. 2 (7), Vol. 3 (8), Vol. 4 (9), Vol. 5 (10), Vol. 6 (11), Vol. 7 (12) and Vol. 8 (13) fd.

10 May, 1928—Opinion (14) fd.

11 May, 1928—Decree, defendant to pay costs (15) fd.

11 May, 1928—Appeal prayed to the Court of Appeals of Maryland from decree of this Court dated 11th May, 1928 (16) fd.

22 May, 1928—Stipulation of Counsel as to record in Appeal (17) fd.

23 May, 1928—Order for Cross-Appeal on Halethorpe (18) fd.

(1)

BILL OF COMPLAINT.

(Filed March 13, 1928.)

In the Circuit Court No. 2 of Baltimore City.

The United Railways and Electric Company of Baltimore

vs.

Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, Constituting the Public Service Commission of Maryland.

To the Honorable, the Judge of said Court:

The United Railways and Electric Company of Baltimore, a body corporate, (hereinafter called the Company), brings this its bill of complaint against Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, members, constituting the Public Service Commission of Maryland, (hereinafter called the Commission), and complaining says:

1. The Company is a Maryland corporation and a street railroad corporation as defined in the Public Service Commission Law and owns and operates street railway property in Baltimore City and Baltimore and Howard Counties. The defendant Harold E. West is the chairman and the defendants J. Frank Harper and Steuart Purcell are members of the Public Service Commission of Maryland and all constitute the Public Service Commission of Maryland.

2. Order No. 8240, passed by the Commission on May 26, 1924, fixed the Company's base rate fare at seven and one-half cents, when checks are purchased, or eight cents cash, with a four cent fare for children, school tickets at five cents and commutation tickets at special rates, and said fares were continued in effect by Order No. 10,072 passed by the Commission on March 9, 1926.

3. As is recited in the opinion of the Commission in the case hereinafter referred to, the Company "on Aug-

ust 1, 1927, filed with this Commission an application for an increase in the rates of fare charged by the Company from eight cents cash with two tokens for fifteen cents, to a ten cent flat rate, asserting that the existing rate of fare 'is inadequate to give a fair return on the value of your petitioner's properties devoted to the public service, and that the net income of your petitioner has constantly fallen short of the amount estimated by the Commission as necessary for good credit and satisfactory service to the public.'

"The application pointed out that the revenue of the Company had been falling steadily, that taxes, wages and other items included in the cost of operation

> 'have increased, so that your petitioner is now confronted with an emergency which requires immediate relief, if it is to continue to perform its public service, maintain its credit and secure necessary money to provide new cars and other equipment. * * * your petitioner believes that a ten cent fare is necessary to enable it to serve the public adequately and obtain funds necessary for the coming years to keep pace with the growing needs of the City, and obtain a fair return on the fair value of its properties.'

"The Company thereupon asked for the establishment of a flat fare of ten cents cash, half fare of five cents for children under twelve years of age, school tickets at five cents each and commutation tickets at special rates. It also asked that the Commission put into effect at once 'substantially increased fares' to meet the emergency the Company asserted it was facing by reason of its decreasing revenues, pending the establishment of permanent rates of fare.

"The application of the Company, therefore, was two fold. It asked for the establishment of an emergency rate of such amount as the Commission might regard to be sufficient, and a permanent rate of ten cents.

"The Commission first heard the application for the emergency increase, the hearings beginning on September 6 and ending September 14. The taking of testimony occupied five days. On September 20, 1927, the Commis-

sion passed Order No. 11802 denying the application for an emergency rate of fare, on the ground that the Company had failed to show that such an emergency existed in the affairs of the Company as to warrant a temporary increase in fares (*i. e.*, had failed to show "that the public interest requires the establishment of substantially increased fares as temporary emergency fares"), or that such increase was 'necessary for the purpose of providing adequate and efficient service, or for the perservation of property.'

"By the same order the Commission set October 26 as the date for beginning the hearing of the application for the permanent increase in the fare rate, the date later being changed to October 27. The taking of testimony in this hearing occupied eleven days and three additional days were devoted to argument of counsel. The case was finally submitted on December 10, 1927."

4. As is also recited in the opinion of the Commission in the case aforesaid, "the communities and citizens of Halethorpe, Arbutus and Leeds," in Baltimore County, intervening by counsel, "alleged discrimination against the communities mentioned because the length of the ride to the center of the City, for which they are charged two fares, is less than car riders of other communities receive for one fare," and asked that said communities be given a single fare instead of two fares.

5. On Febrary 10, 1928, the Commission in the case aforesaid filed an opinion and passed Order No. 12639 (of which the opinion was made part), by which, among other things, (1) the application of the Company for the establishment of a flat fare of ten cents was denied, (2) the Company from and after midnight of February 12, 1928, and until further order of the Commission, was permitted to charge a base rate fare of eight and one-third cents when checks are purchased or nine cents cash, and five cents for children, (3) the first fare zone on the Halethorpe line was extended to the terminal at Halethorpe and (4) all other fares were continued. A copy of said opinion and order is filed herewith as part hereof marked "Plaintiff's Exhibit A."

6. In its opinion aforesaid the Commission found (1)

that the present fair value of the Company's property used in the public service is $75,000,000 and (2) that the annual return that can reasonably be expected by the Company from the rates fixed by the order last mentioned is $4,691,606 and (3) amounts to a return of 6.26 per cent. on the fair value of the Company's property. The overwhelming weight of the evidence before the Commission showed, there was no substantial evidence to the contrary and the fact is (1) that the fair value of the Company's said property was and is more than $75,000,000, (2) the annual return that can be expected by the Company from said rates is less than $4,691,606, and (3) an annual return of 6.26 per cent. would be substantially less than a fair return such as the Company is entitled, under the Constitution of the United States, and also under the Maryland Bill of Rights and the Public Service Commission Lay, to be permitted to earn. Said order of the Commission, therefore, and any prior orders of the Commission limiting the Company to the same or lower rates, are contrary to the Fourteenth Amendment of the Constitution of the United States and to the Maryland Bill of Rights and the Public Service Commission Law and are null and void, and, so long as they are enforced, deprive the Company of its property without due process of law, and said orders and the rates, regulations, practices, acts and services fixed thereby are unlawful and unreasonable.

7. In comparison with the value of property, volume of business and magnitude of interests, public and private, involved, the issues of fact presented by the Company's application of August 1, 1927, or arising in the course of the hearings had thereon and decided in the Commission's opinion or order were few. This resulted from two facts: (1) The fair value of the Company's property had already been exhaustively investigated by the Commission in a valuation case under Section 30 of the Public Service Commission Law and finally ascertained by an order of the Commission which on appeal had been confirmed by the Circuit Court of Baltimore City. On appeal to the Court of Appeals the case had been remanded for further proceedings on the sole question of the amount of the value of easements.

This question had been reheard by and submitted to the Commission and was decided by the Commission in an opinion filed and Order No. 12630 (of which the opinion was made part) passed on February 1, 1928. The entire record in said valuation case was offered in evidence at the hearings on the Company's application of August 1, 1927. (2) In four previous rate cases before the Commission between 1918 and 1924, questions as to the Company's operations, revenues, expenses, etc., had been exhaustively investigated and the facts fully ascertained by the Commission. The Commission also has been kept fully informed as to such matters by periodic reports filed with it by the Company pursuant to orders of the Commission in these various rate cases. Although the question what is a fair rate of return on the Company's property had never been definitely decided or squarely presented before the Company's application of August 1, 1927, yet in the valuation case and in some of the rate cases the question had received consideration and material evidence had been offered.

8. In each and all of the following respects Order No. 12,639 of the Commission, and the Commission's opinion made a part of said order, and any prior orders of the Commission limiting the Company to the same or lower rates, and the rates, regulations, practices, acts and services fixed by said orders or any of them are unlawful, unreasonable, arbitrary, unsupported by any substantial evidence, contrary to the facts established by substantial evidence, confiscatory and contrary to the Fourteenth Amendment of the Constitution of the United States and to the Maryland Bill of Rights and the Public Service Commission Law and null and void, and so long as they are enforced deprive the Company of its property without due process of law:

(a) The maximum rates of fare which by said orders the Company is now permitted to charge and collect are grossly inadequate to provide for the necessary expenses of its public service and for the consumption of its property enployed in such service and to yield a fair return upon the fair value of its property so employed.

(b) The percentage which the Commission found

would be the rate of return upon the fair value of the Company's property yielded by the fares established by said order was adopted by the Commission as a fair rate of return solely for reasons and upon considerations that have no true relation to the fairness of a return and is a grossly inadequate rate of return to compensate the Company for the use of its property in the public service without confiscation of its property.

(c) The amount which the Commission determined would be a proper annual allowance out of earnings to provide for depreciation and retirement of the Company's property used in the public service is grossly inadequate for that purpose and was fixed by the Commission upon a basis that has no true relation to the amount required for said purpose.

(d) No allowance was made, in determining the present value of the Company's property upon which the rate of return from the rates established must be calculated, for the net additions to its property since January 1, 1924.

(e) The Commission by said order burdened the Company with a substantial loss of revenue by requiring it to abolish the second fare upon its Halethorpe line, which loss, without any compensating offset, and without any lawful reason for abolition of said fare, further diminishes the inadequate return upon the Company's property.

9. That the action of the Commission in so refusing to allow the Company to charge and collect for its service the rates of fare proposed and required by it, limiting it to the rates specified and provided in said opinion and said order of February 10, 1928, and abolishing its second fare on its Halethorpe line is therefore not only unreasonable but confiscatory, unlawful and void, and constitutes a taking of the Company's property without adequate compensation and without due process of law, and will, unless the Commission be enjoined and prohibited by this Honorable Court from enforcing said prior order or any previous or other order purporting to prescribe the same or any lower rate, or any rate not

sufficient to enable the Company to earn a fair return, result in irreparable injury and damage to the Company.

10. In view of the fact that the Company is suffering daily confiscation of its property by the operation of the Commission's orders, the Company will suffer immediate and irreparable loss and damage unless the operation and effect of said orders are immediately enjoined or restrained or suspended or stayed by this Honorable Court by a preliminary injunction or a restraining order. To the end therefore:

1. That the aforesaid Order No. 12,639 of the Public Service Commission of Maryland, the defendants herein, passed on the 10th day of February, 1928, insofar as it purports to limit the rates of The United Railways and Electric Company of Baltimore, the plaintiff herein, so as to prevent the plaintiff from charging a flat fare of ten cents or from making similar increases in commutation and other special rates or from continuing the first and second fare zones on the Halethorpe line as they existed on the date of said Order, and any prior orders of the Commission insofar as they purport so to limit the rates of the Company, and the rates, regulations, practices, acts and services fixed by said orders or any of them insofar as they purport to limit the Company as aforesaid, be adjudged and decreed to be unlawful, unreasonable, unconstitutional, null and void and be vacated and set aside.

2. That the defendants, Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, members, constituting the Public Service Commission of Maryland, and their respective successor in office, agents and attorneys, and all persons acting under their authority may be perpetually and also preliminarily pending this unit, restrained and enjoined from enforcing or continuing in force against the plaintiff the aforesaid Order No. 12,639, insofar as it purports to limit the rates of the plaintiff so as to prevent the plaintiff from charging a flat rate of ten cents or from making similar increases in commutation and other special rates or from continuing the first and second fare zones on the Halethorpe line as they existed on the date of said Order, or any prior

orders of the Commission insofar as they purport so to limit the rates of the Company.

3. And that the plaintiff may have such other and further relief in the premises as its case may require.

May it please your Honor to grant unto the plaintiff the writ of subpoena directed to the defendants, Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, members, constituting the Public Service Commission of Maryland, and each of them, commanding them and each of them to be and appear in this Honorable Court on some certain day to be named therein to answer the premises and abide by and perform such order or decree as this Honorable Court may make in the premises.

And as in duty bound your orator will ever pray.

(Signed) HENRY H. WATERS,

VENABLE, BAETJER & HOWARD,

HAMAN, COOK, CHESTNUT, & MARKELL,

J. C. FRANCE,

Solicitors for Plaintiff, The United Railways and Electric Company of Baltimore.

State of Maryland, City of Baltimore, SS.:

I hereby certify that on this 13th day of March, 1928, before me, the subscriber, a notary public of the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared Charles D. Emmons and made oath in due form of law as follows:

"I am the President of The United Railways and Electric Company of Baltimore, the plaintiff in the aforegoing bill of complaint. I am authorized to make this affidavit on behalf of The United Railways and Electric Company of Baltimore. I have read the aforegoing bill. I have personal knowledge of the matters and facts

stated in the aforegoing bill. The matters and facts stated in the aforegoing bill are true to the best of my knowledge and belief."

CHARLES D. EMMONS.

Subscribed and sworn to before me this 13th day of March, 1928.

As witness my hand and notarial seal.

CHARLES J. KUHLMAN,

Notary Public.

Upon the aforegoing bill of complaint and affidavit, it is this 13th day of March, 1928, by the Circuit Court No. 2 of Baltimore City ordered that a writ of injunction be issued as prayed in said bill unless cause to the contrary be shown by the defendants within twenty days after service of a copy of this order of this Bill of Complaint.

JOSEPH N. ULMAN.

True Copy Test:

JOHN PLEASANTS,

Clerk.

(2)

PLAINTIFF'S EXHIBIT A, FILED WITH THE BILL OF COMPLAINT.

PUBLIC SERVICE COMMISSION OF MARYLAND.

OPINION

Before the Public Service Commission of Maryland

Case No. 2648

In the matter of the application of The United Railways and Electric Company of Baltimore for the establishment of a permanent rate of fare of 10 cents and for the establishment of a temporary emergency rate of fare pending the establishment of such permanent rate of fare.

Appearances:

Thomas J. Tingley, Esq., People's Counsel.

Simon E. Sobeloff, Esq., Deputy City Solicitor, with whom was A. Walter Kraus, Esq., City Solicitor, on the brief, for the Mayor and City Council of Baltimore.

Linwood L. Clark, Esq., and Eli Baer, Esq., for the People's Committee.

Messrs. Benson, Rowe and Cullen, for the communities and citizens of Halethorpe, Arbutus and Leeds.

Lester L. Barrett, Esq., for Landsdowne Improvement Asociation.

William H. Lawrence, Esq., for The Morrell Park Improvement Association.

William A. Toole, Esq., for the Socialist Party of Maryland.

Mrs. Ida May Waters, Chairman, Housewives Alliance.

Mr. John W. Gray, representing The Merchants Association of Northeast Baltimore.

Harry M. Berman, Esq., for W. Wallace, et al.

Joseph C. France, Esq., Messrs. Venable, Baetjer and Howard, Messrs. Haman, Cook, Chesnut and Markell, Henry H. Waters, Esq., and Albert R. Stuart, Esq., for The United Railways and Electric Company of Baltimore.

West, Chairman. Filed February 10, 1928.

The United Railways and Electric Company of Baltimore on August 1, 1927, filed with this Commission an application for an increase in the rates of fare charged by the Company from eight cents cash with two tokens for fifteen cents, to a ten cent flat rate, asserting that the existing rate of fare "is inadequate to give a fair return on the value of your petitioner's properties devoted to the public service, and that the net income of your petitioner has constantly fallen short of the amount estimated by the Commission as necessary for good credit and satisfactory service to the public."

The application pointed out that the revenue of the Company had been falling steadily, that taxes, wages and other items included in the cost of operation

> "have increased, so that your petitioner is now confronted with an emergency which requires immediate relief, if it is to continue to perform its public service, maintain its credit and secure necessary money to provide new cars and other equipment. * * * Your petitioner believes that a ten cent fare is necessary to enable it to serve the public adequately and obtain funds necessary for the coming years to keep pace with the growing needs of the City, and obtain a fair return on the fair value of its properties."

The Company thereupon asked for the establishment of a flat fare of ten cents cash, half fare of five cents for children under twelve years of age, school tickets at five cents each and commutation tickets at special rates. It also asked that the Commission put into effect at once "substantially increased fares" to meet the emergency

the Company asserted it was facing by reason of its decreasing revenues, pending the establishment of permanent rates of fare.

The application of the Company, therefore, was two fold. It asked for the establishment of an emergency rate of such amount as the Commission might regard to be sufficient, and a permanent rate of ten cents.

The Commission first heard the application for the emergency increase, the hearings beginning on September 6 and ending September 14. The taking of testimony occupied five days. On September 20, 1927, the Commission passed Order No. 11802 denying the application for an emergency rate of fare, on the ground that the Company had failed to show that such an emergency existed in the affairs of the Company as to warrant a temporary increase in fares, or that such increase was "necessary for the purpose of providing adequate and efficient service, or for the preservation of property."

By the same order the Commission set October 26 as the date for beginning the hearing of the application for the permanent increase in the fare rate, the date later being changed to October 27. The taking of testimony in this hearing occupied eleven days and three additional days were devoted to argument of counsel. The case was finally submitted on December 10, 1927.

The case against the Company was presented by Mr. Thomas J. Tingley, People's Counsel, who represented the people as a whole, Messrs. Linwood L. Clark and Eli Baer, counsel for the People's Committee, which is composed of representatives of civic and improvement associations, and Mr. William A. Toole, counsel for the Socialist Party.

Messrs. Charles C. Wallace and John H. Lewin, who were later succeeded by Messrs. A. Walter Kraus and Simon E. Sobeloff, of the Law Department of Baltimore City, represented the Mayor and City Council of Baltimore, who took the position that the City would be opposed to an increase unless the increase should be proved necessary in order to allow the Company to render proper and adequate service, and secure a fair return upon its property.

Messrs. Carville D. Benson and James K. Cullen appeared as counsel for the communities and citizens of Halethorpe, Arbutus and Leeds, patrons of No. 3 car line, who alleged discrimination against the communities mentioned because the length of the ride to the center of the City, for which they are charged two fares, is less than car riders of other communities receive for one fare.

The Company's position as shown by the testimony of its witnesses and set forth in the briefs of counsel was as follows:

1. Flat ten cent fares (with corresponding increased special fares) are in themselves reasonable to the customers—not more than the service is worth.

2. Such increased fares will yield the Company *less* than a fair return on the fair value of its property—even less than the constitutional protection against confiscation.

3. *Compulsory* limitation of the Company's rates to yield a *maximum* of less than 8 per cent. is confiscation.

On the other hand, People's Counsel's position was as follows:

1. The rates now charged the public are all that the service is worth.

2. Even if they do not exceed service value, they are a burden to the riding public.

3. If the rates are only burdensome and do not exceed service value, the Commission should hew as close to the line of confiscation as it can.

Mr. Clark and Mr. Toole took substantially the same position as that taken by the People's Counsel.

PROBLEMS TO BE CONSIDERED

The problems before the Commission are neither simple nor easy of solution. They involve the consideration of a number of issues in addition to that of determining a fair return upon the fair value of the Company's property and fixing a rate which will yield that return. Most

of these matters have been referred to by counsel and one or two have been in the Commission's mind for some time. These latter, while perhaps beyond the jurisdiction of the Commission, still have a bearing upon the situation.

Among the matters which the Commission must take into careful consideration is whether the service rendered by the Company is worth more than the people are now paying for it. The Supreme Court of the United States in Smyth v. Ames (169 U. S. 466), has decided that charges for service may not exceed the value of that service, irrespective of the rate of return. The problem is to find a measure by which it can be determined whether the present rate is all the service is worth and, if not, what rate would be commensurate with the value of the service and proper for the people to pay.

Another problem is to determine what will be a fair rate of return; not for an electric company, or a water company, but for this particular company and in the light of the particular conditions surrounding it.

Another is the question of maintaining the Company's credit so that additional capital may be secured to meet the growing demands of the public; whether that credit can be maintained at all by rates that will be fair to the public and no more than the service is worth in view of the existing financial structure of the Company; and whether something other than increased rates is not needed to establish credit on a firm foundation.

Another is whether a receivership for the Company would or would not be desirable and, if there should be a receivership, what would be its effect upon the rate of fare and upon the business life of the City.

Another is how far the railway system and the service it renders are necessary to the comfort and well being of the people of Baltimore and the maintenance of property values, particularly in the outlying sections; and whether there is a practical substitute which would render as good and as dependable service at less cost.

Another is making clear to the people how much of what they pay in street car fares is actually for the service the Company renders its customers, and how much

is for the purchase and maintenance of purely public institutions such as parks, stadium, swimming pools and the like.

And finally, will the Commission be justified in extending a single fare zone about two miles beyond the City limits because the distance traveled to the end of that zone is less than is traveled in some other directions for a single fare.

COMPANY'S RIGHT TO A FAIR RETURN

There can be no question as to the right of the Company to a fair return upon the fair value of its property, provided it can earn that return at rates inherently fair to the public and which are not more than the service rendered by the Company is worth. The Supreme Court of the United States has settled that matter so often that it would be idle to discuss it. Moreover, if it can earn a fair return on the fair value of its property, at rates which are fair to the public and not more than the service is worth, then it is rate of return with which the Commission is concerned and not any particular amount to surplus. It is true that the Commission, in earlier cases, fixed rates which it estimated would yield a minimum, of $1,000,000 or a maximum of $1,500,000 to surplus, annually, or from 1⅓ to 1½ times the Company's fixed charges. But that was before the value of the Company's property had been established by this Commission. Since $75,000,000 has been found to be the value of the Company's property, that figure must be used as the base for calculating return.

People's Counsel contends that the present rate of fare is all the service is worth, while the Company asserts that a flat ten cent fare is reasonable to the Company's customers and is not more than the service is worth. People's Counsel holds that the present rates are shown to be burdensome (even if they do not exceed the actual worth of the service) by the fact that the number of revenue passengers has shown a decided decline in 1927 compared with 1926. The Company insists that this decline is due to automobile competition, the substitution of a more expensive form of tranportation for a cheaper one, and not because the rate is burdensome. In sup-

port of his theory that the present rate of fare is all or more than the service is worth, the People's Counsel cites this Commission's opinion in the 1919 rate case when the fare was increased from five to six cents. In that case the Commission said:

> "This Commission has concluded from the facts before it in this case that the fair worth of reasonably adequate street railway service to the community served by the respondent company, *and under existing conditions,* is six cents * * *." (10 P. S. C. Md. 39) (Italics ours).

People's Counsel used wholesale commodity and other index figures to indicate that if six cents was the fair worth of the service in 1919, there is no justification for raising the fare above the present level.

It is true that the Commission did use the expression quoted by People's Counsel, but it is also true that the Commission could not have meant that the service was worth *no more* than six cents. The Commission held that it was worth what the Company asked, which was six cents. The rate of fare existing prior to the increase on October 1st, 1918, was five cents, and had been five cents for many years. That rate had been fixed by the General Assembly, and not by the Commission. The Company filed on August 28, 1918, effective October 1, 1918, the proposed rate of six cents. The Commission, on its own motion, instituted an investigation to determine whether the increase was justified and found that the Company, by reason of largely increased expenses, was in a precarious financial condition, and, reluctant as it was, and always is, to increase rates, it approved the exact amount of the increase which the Company held that it needed, finding that "under existing conditions" the service was worth six cents. Conditions continued to change for the worse and, as they changed, the rate was increased to six and one-half, later to seven, and finally to seven and one-half cents. In granting these increases the measure used in determining the amount of increase was not the worth of the service, but the cost of rendering it, plus a reasonable profit, the Commission holding that a minimum annual balance to surplus of $1,000,000 and a maximum of $1,500,000 would be reasonable.

It is proper to say at this point that it was never intended by the Commission that the Company should profit to the extent of the last increase of one-half cent in fare and that it did not so profit. In the case in which the seven and one-half cent rate was established it was shown that the Company would fall short of the minimum of $1,000,000 which the Commission had said the Company could earn as a surplus, and that about $300,000 would be required to bring the amount to surplus up to $1,000,000. At that time an increase of one-half cent in the rate of fare was estimated to yield in the neighborhood of $1,150,000. In granting the increase from seven to seven and one-half cents, the Commission ordered extensions of zones, establishment of bus lines, and improvements to service, estimating that of the amount to be yielded by the one-half cent increase, the Company would receive only $205,876. As matters turned out, the Company did not receive even that much from the increase, which went almost entirely to the adjusting of inequalities and to improvements in service. In deciding the 1924 case the Commission did not feel that the falling off in riding had been due to the rate of fare. It pointed out in its opinion that after the increases from five to six cents, and then to six and one-half cents, riding actually increased, while for the year 1920, when the rate was increased to seven cents, the Company carried the greatest number of passengers in its history. It stated that it believed the subsequent decreases in riding had been due to the business depression which set in about the middle of 1920 and to the constantly increasing use of the automobile.

The Commission believes that today the falling off in riding is due, not to the amount of the fare, but in part to the slump in business which has been felt in all parts of the country and which continues, and is still larger part to the more general use of the automobile. Automobile competition promises to be greater in 1928 than it was in 1927. The country is now witnessing the most active automobile selling campaign that the industry has ever known. If it be true, as counsel for the Company state (Brief, page 6), that the people of Baltimore paid more for gasoline in 1926 than they paid for carfares, they will probably continue to pay more in 1928.

RAILWAY SERVICE A NECESSITY.

That the service rendered by the Company is a necessary and vital service to the people of Baltimore, is indicated by the fact that the demand upon the system during morning and evening rush hours is almost greater than the Company can meet. Time was when the service was used for pleasure. That day has gone. The Motor car has largely taken the place of the street car for pleasure riding. The street cars are used only by those who find them necessary or convenient to get to and from places of employment, or for other trips about the city. The service to the people for such trips is almost indispensible. It would be practically impossible for all the people who use the street cars to reach their places of business or employment, and return to their homes, by any other means of transportation now available. And if the service is necessary to them they cannot expect to be transported for less than the cost of transporting them, plus a fair return for the use of the agency of transportation. Even at somewhat increased cost the street car service still would be the *cheapest* form of transportation the people could get.

That the extension of the railway system into the suburbs has resulted in the development of the sections which the lines serve is beyond question. Even in these days of almost universal use of the automobile, property values, except perhaps in that part of the City as it existed prior to the annexation of 1888, are dependent largely upon street railway transportation. Withdrawal or material curtailment of service would be felt immediately in the lowering of real estate values, for there is no transportation agency which could give so comprehensive a service at such low cost.

Moreover, the development of property and the creation of higher values along the outlying lines of the Company often have been largely at the *expense* of the Company. While creating increased values in land by the extension of its lines and service, thus benefiting immediately the property owner (and the City and County by increasing the taxable basis), the Company has no way of sharing in the increased values it creates until the time comes when there is sufficient development in new

territory to produce enough traffic to make the operation of the lines compensatory. Until that time is reached, the Company is compelled to give service to new territory at a loss. This is not the case with gas, electric or telephone companies, for as lines of such companies are extended into new or sparsely settled sections, those receiving and benefiting by their service are required to pay part of the cost of building the extensions, being reimbursed as new customers come on the lines. Many of the Company's lines which extend into the suburbs are still operated at a loss.

Much has been said about the loss of the short rider and this is often attributed to the price of the car ride. This may be true in some cases, but it does not appear to be so with a great many. To the extent that the short rider has been lost, this loss is due, it seems to the Commission, not so much to the cost of the ride but to the length of time the ride itself takes. This is due to the congestion in the streets, caused by the automobile which not only cuts into the revenues of the Company but slows up the operation of the street cars, so that an ordinarily vigorous person frequently can walk through the congested business section in less time than he can make the journey on a street car. With automobiles parked on each side of a street all traffic is forced on the car tracks, slowing up the cars and making street car operation more costly for the slower the cars run, the more expensive it is to operate them. One reason for the Company's plight today is the fact that following annexation in 1918, the city zones on the street car system were extended to the new city line, this line for nearly the entire distance around the City having been extended about two miles. Annexation, while a desirable thing for the City, did not benefit the Railways Company in the slightest degree. Indeed, it imposed additional obligations upon it, and when extensions of fare zones were made it caused extensive loss of revenue which had to be made up through rate increases. In fact, taking all things into consideration, including the cost of giving the service, the extension of lines and fare zones, the greater transfer privileges, the auxiliary bus lines and the like, the Commission believes that street car riders as a whole today receive relatively much more for the fare they pay than they ever received for a five cent fare.

WOULD A RECEIVERSHIP HELP CAR RIDERS

Mr. Toole, counsel for the Socialist Party, declares in his brief that:

> "* * * it (the Company) should be compelled to give service and proper service to the citizens of Baltimore *at the present rate of fare, until it is properly forced into a reeciversh*ip where a proper reorganization could be effected and an onerous burden removed from the shoulders of the citizens of Baltimore." (Italics ours).

While this seems to indicate that Mr. Toole believes that if the Company should be compelled to continue service at the present rate of fare, the Company would be forced into a receivership, it is difficult to see how a receivership would benefit the car riders of Baltimore, or how any burdens would be lifted from their shoulders, even if the Commission had the power to force a receivership. It is perhaps true that a reoganization of the Company would be effected, but it is hard to understand how that would reduce fares. Subject to the limitation that the fare shall not exceed the worth of the service, fares are based on two elements, cost of operation and the value of the property used and useful in the public service. This Commission has fixed a value of $75,000,000 for the Company's property and by law the Company would be permitted to earn a return upon that sum. The securities of the Company might be scaled down, but the *value of the property* could not be reduced by any action the receivers might take. A reduced value might be found by the Commission as a result of a general lowering of prices which would make the property less costly to reproduce than it was when such value was established. And although the Company's *securities* might be reduced below their present total par value, the Company, or the receivers, could, subject to the provisions of the law, issue securities to the extent of the value found by the Commission (Section 381 of Article 23, Bagby's Annotated Code).

A receivership for a property valued at $75,000,000 with gross revenues of more than $16,000,000 a year would be an expensive matter. There would be large

court costs, receivers' fees and like expenses, in addition to the usual operating costs, all of which would have to come out of the rates of fare.

A very serious aspect of the situation is the effect a receivership would have upon the community. The Railways Company is locally owned, perhaps 90 per cent. of all its securities being held in Baltimore, or at least in Maryland. Practically every financial institution in Baltimore, and many throughout the State, hold them either as investments of their own or as security for loans, or both. A receivership, with its resultant depression of the market value of the Company's securities, would seriously disturb the business life of Baltimore and might seriously affect the employment situation.

The foregoing discussion is altogether academic, and the Commission has entered upon it simply to indicate that no good, but much harm, not only to the car riders, but to the whole community, would, in the opinion of the Commission, result from a receivership for the Company.

REORGANIZATION OF FINANCIAL STRUCTURE DESIRABLE

A reorganization of the financial structure of the Company is, however, another matter, and it is one which the Commission has had in mind for a long time, even though it may be outside the Commission's jurisdiction. The Commission had in mind an expression of its views on the subject in its opinion in the seven and one-half cent fare case, filed May 26, 1924, but felt constrained to eliminate all reference to this subject from that opinion because of the possible bad effect it might have upon the Company, which in turn might be reflected in the fare situation. The matter now being one of common discussion, the Commission feels free to set forth its views not because a reorganization of the financial structure may affect the rate of fare except indirectly, but because of its probable effect upon the Company's credit.

In every rate hearing in which an increase has been asked, emphasis has been laid upon the importance of establishing a rate which would sustain the Company's

credit, and which would enable it to borrow money for its capital expenditures at lower rates. Recently emphasis has been laid upon the paying of dividends in order to maintain credit, and increase the borrowing capacity of the Company. Frankly, the Commission does not believe credit is helped by paying dividends out of surplus when they have not been earned, and by distributing the money held in the surplus account to the stockholders, from whom it cannot be recovered, rather than retaining it in the surplus account where it is, at least, an actual, tangible basis for credit. The Commission has no comment to make upon the statement that money in the surplus account actually belongs to the stockholders, and that it is the right of the stockholders to have it paid to them in dividends. So does the surplus actually paid in by the stockholders of a bank belong to such stockholders, but it is not paid back to them in dividends, particularly when earnings are low, as a means of maintaining the bank's credit.

The Commission has constantly been cognizant of the importance of credit to the companies under its jurisdiction and of the maintenance of that credit. As far back as 1918, when the six cent fare case was heard, the Company insisted that the increased rate was necessary to maintain its credit. In its opinion in that case, filed January 7, 1919, the Commission said on that subject:

> "The Commission is fully mindful of the desirability of upholding the credit of all public utilities subject to its jurisdiction to the fullest extent consistent with justice to the general public. But it is also fully mindful of the ultimate dangers of a false credit bolstered up by orders establishing rates for services which are not justified by the fair worth of the service rendered."

That is the Commission's position today. In any rate of fare allowed, out of which dividends may be paid, it is not allowing that amount for the payment of dividends for the sake of maintaining the Company's credit, but because the Company is entitled to that amount to surplus as a matter of right; and the Company, in the ex-

ercise of its own discretion, can pay it out in dividends or retain it in its surplus account.

As a matter of cold and possibly unpleasant fact, this Commission does not believe that the Company's credit can be permanently bolstered up or maintained by the payment of dividends as long as its financial set up remains as at present. The structure is top heavy. There are too many bonds outstanding in proportion to the stock. The stockholders have too small an equity in the property. Including its notes, the Company has outstanding $67,176,200 in securities representing funded debt and $20,461,200 in stock. Not only is the par value of these securities $12,637,400 in excess of the value of the property as fixed by the Commission, but the ratio of funded debt to total capitalization is approximately 76 per cent. The ratio of funded debt to value of the property found by the Commission is approximately 90 per cent. The Commission believes that the ratio of debt to stock ought not to be greater in a company of this sort than 67 to 33, and does not believe its credit can be permanently established and maintained until approximately this ratio is created. It is of the opinion that the par value of the securities ought not to exceed the value of the property as found by the Commission, and, for safety, should be even less than the value found. It must be remembered that the value of this property was established largely on present day costs, which had increased very much in the years immediately preceding the valuation. The time may come when reduced costs of reproduction may necessitate a lower valuation, in which event, if the par value of securities is now scaled down only to the Commission value, the Company again may find itself in the position it now is in; that is, with securities outstanding exceeding in par value the then value of the property.

There are other defects in the Company's financial structure in addition to the disproportionate ratio of bonds to stock. It is admitted that under present conditions the Company cannot sell junior securities, such as preferred and common stock, to obtain money for capital expenditures. Nor can it issue bonds on the property of The United Railways and Electric Company of Baltimore in order to secure new capital, because the

Company has a closed mortgage and any new property obtained is immediately covered by that mortgage. For such new capital as it may obtain and for which it must issue bonds it must adopt the expedient of issuing these bonds in the name of a subsidiary, The Maryland Electric Railways Company, procuring property with that money, and then leasing the property to the United for a sufficient sum to pay the interest on the bonds and provide for their retirement at maturity.

A reorganization of the financial structure of the Company would naturally result in the substitution of a more flexible mortgage for the old closed mortgage. This would enable the Company to provide for its capital requirements by the issuance of new securities as new property is acquired, on the basis, perhaps, of 67 per cent. of bonds and 33 per cent. of stock.

While the Commission recognizes it has the authority to order any such reorganization as is here outlined, it trusts that the Company will take the problem under earnest consideration and work out a plan of financial reorganization that will help solve its difficulties concerning credit.

EFFECT OF PARK TAX ON CAR FARES.

An element in the street railway situation in Baltimore which results in higher rates of fare, and which does not obtain, so far as this Commission is aware, in other cities, is the Park Tax. This matter is better understood now by the car riding public than it was some years ago. It is purely and simply a tax on the street car riders for the support of the city parks. The Company does not pay it. It is paid by the riders and the Company simply acts as collector, receiving approximately one-half cent on each fare the rider pays and turning the money over to the City quarterly. It was, perhaps, a tax on the Company in former years, but now it is an expense which must be deducted before any rate of return is calculated. The result is that the parks are maintained, stadium and swimming pools built, tennis courts, golf courses, base ball fields and the like established, and park roads maintained for automobilists, at the expense of the street car rider instead of the general public. The

street car riders have contributed for these purposes since 1910, when the Company was put under Public Service Commission regulation, the sum of $15,406,794. This, of course, is in addition to the general taxes and such special charges as those made for street paving and for maintaining the paving between the tracks and for two feet on each side, which are also paid by the street car riders.

The parks must, of course, be maintained. The only question is whether they ought to be maintained by the street car riders or by the taxpayers generally. The requirement as to the Park Tax is a legislative one and can only be changed by an Act of the General Assembly. The sum realized by the Park Tax is equal to about eleven cents on the tax rate of Baltimore City. It could hardly be assumed that any municipal administration would consent to that amount being put upon the tax rate in a lump, but an arrangement might be made by which the City would consent to the passage of an Act reducing the 9 per cent. tax one-ninth each year, which would gradually relieve the street car riders of this burden and wipe it out entirely in a period of nine years.

The purpose of the Commission in discussing this matter is not to make any recommendation about it whatever, but simply to point out that part of the amount which street car riders pay as car fare is for no railway purpose whatever but for the maintenance of the parks and park activities.

WHAT VARIOUS RATES WOULD YIELD.

In the hearing before the Commission, the Company submitted exhibits, supported by testimony, to show that the balance to surplus for 1927 would amount to only $424,388. (Company Exhibit 7 C.) This figure was reached on the basis of nine months actual and three months estimated receipts and expenditures, which latter included estimates for increased expenses of $120,000 for power, $120,000 for accidents and damages, and $75,000 for increased taxes, for the year. The amount of net income thus arrived at, $424,388, indicates a return of slightly less than five per cent. The estimated falling off in passenger revenue was 3.21 per cent. for the year.

Actual figures for the whole year became available before the Commission reached its conclusion in the case. They show an actual net income of $682,187, without the deductions for increased expenses. If these were applied to the figure $682,187, the net income would be reduced to $409,712, after allowance for federal income tax. But in the one item of property taxes the increase will be $20,000 instead of $75,000, which makes the figure for net income, adjusted for federal income tax, $457,287, indicating a return of slightly more than 5 per cent. The actual falling off in passenger revenue for the year was 3.2 per cent.

The Company claimed that its expenses for 1928 over 1927 would be increased by the amounts heretofore mentioned, together with an actual amount of $260,000 additional for wages. This wage increase is made up of an increase of one cent an hour for all employes, contracted for unconditionally for 1928, and of one cent an hour additional promised the employees if any rate increase whatever should be allowed by the Commission.

The wage increases are actual and the amount thereof known. The Commission feels that the estimates for the others are too high. It allows for an increase in power expenses of $75,000 instead of $120,000, of $100,000 for the settlement of claims for accidents and damages instead of $120,000, and the actual figure by which taxes will be increased, $20,000, instead of $75,000.

The Company estimates that there will be a falling off in passengers for 1928 of 5 per cent. It estimates that the falling off during 1927 of approximately 3 per cent. will continue, and that if an increase in the rate of fare is granted it will result in a further falling off of 2 per cent. The Commission feels that the Company is too pessimistic in this matter, notwithstanding the fact that passenger revenue in January, 1928, was 4.68 per cent. below that for January, 1927, and 4.63 per cent. under January, 1926. It believes that even if the automobile competition should be as acute in 1928 as it was in 1927—and it admits this is very likely—the normal increase of the City's population will largely offset the effect of increased automobile competition. Also, it expects an im-

provement in the Company's service which ought to increase riding as well as revenues. It also accepts the statements of the Company's witnesses and counsel, that an increase in fares does not result in any marked decrease in riding. The Company offered elaborate exhibits to sustain this position, and to contradict testimony and exhibits of People's Counsel that fare increases do result in a decrease in the number of passengers.

The Commission has made a number of computations to show, on the basis of the addidtional expenses allowed, what revenues could reasonably be expected by the Company during the year 1928, and what rate of return the Company would receive, based on a straight eight cent fare, a fare of nine cents cash with five tokens for forty cents, a fare of nine cents cash with three tokens for twenty-five cents, one of ten cents cash with three tokens for twenty-five cents, and one of ten cents straight. These computations show the following results, using $75,000,000 as the base for computing return.

ESTIMATED AMOUNT AND RATE OF RETURN, ASSUMING NO DECREASE IN NUMBER OF PASSENGERS.

	8c Flat Fare	9c Cash, 5 for 40c	9c Cash, 3 for 25c	10c Cash, 3 for 25c	10c Flat Fare
Operating Revenues	$17,203,882	$17,357,955	$18,010,178	$18,083,451	$21,344,565
Operating Expenses, Depreciation and Taxes	12,879,211	12,912,883	13,055,423	13,071,436	13,784,136
Operating Income	$ 4,324,671	$ 4,445,072	$ 4,954,755	$ 5,012,015	$ 7,560,429
Non Operating Income	171,000	171,000	171,000	171,000	171,000
Gross Income	$ 4,495,671	$ 4,616,072	$ 5,125,755	$ 5,183,015	$ 7,731,429
Deductions from Gross Income	3,445,000	3,445,000	3,445,000	3,445,000	3,445,000
Net Income	$ 1,050,671	$ 1,171,072	$ 1,680,755	$ 1,738,015	$ 4,286,429
Amount available for Return	$ 4,366,671	$ 4,487,072	$ 4,996,755	$ 5,054,015	$ 7,602,429
Rate of Return on $75,000,000 of property	5.82%	5.98%	6.66%	6.74%	10.14%

ESTIMATED AMOUNT AND RATE OF RETURN WITH VARYING RATES OF DECREASE IN NUMBER OF PASSENGERS.

	8c Flat Fare	9c Cash, 5 for 40c	9c Cash, 3 for 25c	10c Cash, 3 for 25c	10c Flat Fare
No Decrease:					
Amount of Return	$4,366,671	$4,487,072	$4,996,755	$5,054,015	$7,602,429
Per Cent. of Return	5.82%	5.98%	6.66%	6.74%	10.14%
1% Decrease:					
Amount of Return	$4,239,767	$4,359,596	$4,864,182	$4,920,877	$7,443,798
Per Cent. of Return	5.65%	5.81%	6.49%	6.56%	9.93%
2% Decrease:					
Amount of Return	$4,112,862	$4,232,118	$4,731,606	$4,787,722	$7,285,167
Per Cent. of Return	5.48%	5.64%	6.31%	6.38%	9.71%
3% Decrease:					
Amount of Return	$3,985,958	$4,104,641	$4,599,033	$4,654,573	$7,126,537
Per Cent. of Return	5.31%	5.47%	6.13%	6.21%	9.50%
4% Decrease:					
Amount of Return	$3,859,053	$3,977,163	$4,466,459	$4,521,428	$6,967,906
Per Cent. of Return	5.15%	5.30%	5.96%	6.03%	9.29%
5% Decrease:					
Amount of Return	$3,732,148	$3,849,686	$4,333,886	$4,388,281	$6,810,163
Per Cent. of Return	4.96%	5.13%	5.78%	5.85%	9.08%

These figures show that at the varying rates of fare and with various assumptions as to volumn of traffic, the Company would earn a return of from 4.96 per cent. to 10.14 per cent. All these calculations are based on retaining all but the adult and half rate fares now in effect. The computation on the eight cent flat rate puts the half fare at the present rate of four cents, but in the other computations it is raised to five cents.

The Company in its Exhibit No. 24, showed that a ten cent fare would yield an amount available for return of $5,578,079, which is at the rate of 7.44 per cent. on a base of $75,000,000. It computed annual depreciation on the basis of 4 per cent. of depreciable property, making the amount $2,200,000 for this item, instead of calculating it on the old basis of 5 per cent. of operating revenues, used by the Commission. It also allowed for a 5 per cent. falling off in riding.

WHAT CONSTITUTES FAIR RETURN FOR THE UNITED.

The Company has contended that in asking for a ten cent flat fare it was asking for *less* than a fair return, because, according to its figures, the rate of return would be less than 8 per cent. It has cited numerous decisions of the Supreme Court to indicate that that Court regarded 8 per cent. as a fair return, and that any return less than 8 per cent. would be less than a fair return. This Commission does not agree with that interpretation of the decisions. The Supreme Court has not decided that 8 per cent. is the minimum limit of rate of return in all cases. Its findings in each case where it held that an 8 per cent. return was required were based upon the particular facts and circumstances bearing on that particular case. In the Bluefield Water case (262 U. S. 679) decided June 11, 1923, the Court said:

> "A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same g neral part of the country on investments in other business undertakings which are

attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. * * * A rate of return may be reasonable at one time, and become too high or too low by changes affecting opportunities for investment, the money market, and business conditions generally.

"In 1909, this Court, in Willcox v. Consolidated Gas Co. (212 U. S. 19, 48-50) held that the question whether a rate yields such a return as not to be confiscatory depends upon circumstances, locality, and risk, and that no proper rate can be established for all cases; and that, under the circumtances of that case, 6 per cent. was a fair return on the value of the property employed in supplying gas to the city of New York, and that a rate yielding that return was not confiscatory."

In the Dayton-Goose Creek Railway case (263 U. S. 456) the Supreme Court, in an opinion by Chief Justice Taft, said:

" * * the question of the minimum of a fair percentage on value is shown to vary with the circumstances."

This Commission has always assumed that in determining a rate of return, the circumstances surrounding the particular case under consideration would of necessity govern, and that the rate of return would always "vary with the circumstances." It has acted in the past on this assumption and expects to continue to do so until the Maryland Court of Appeals or the Supreme Court lays down a guide to be followed in all cases.

In the case of the Railways Company, the Commission feels that instead of asking *less* than a fair return it has asked a return which the Commission has not exceeded in any case, and which is actually more than the Commission would consider allowing it in view of all the circumstances, even on its own figures; while on the Commission's figures the return would be more than fair, in fact excessive.

The Commission feels that the Company "is entitled to such rates as will permit it to earn a return on the value of the property * * * equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties." The only comparable business undertakings "attended by corresponding risks and uncertainties" that this Commission knows of are those of other street railway companies in the East, and it does not know of such a company which is earning a return of much, if any, more than 6 per cent., no matter what the rate of fare.

It is not contended that because the street railway companies of other cities do not earn a return of more than 6 per cent. that is any reason why the Company in Baltimore should not be allowed to earn more than 6 per cent., provided it can do at rates that are just and reasonable, and no more than the service is worth. It simply points out the fact that railways in other cities, whose business is attended by "corresponding risks and uncertainties," are earning no more than 6 per cent. on the value of their properties.

THEORIES VERSUS FACTS.

Counsel for the Company in their brief (page 84), citing the case of the Pacific Gas Company v. San Francisco (265 U. S. 403), decided June 2, 1924, in which it was found that a return of 7 per cent. was necessary in order to avoid confiscation, state::

> "This decision of the Supreme Court of the United States that in 1913, 1914 and 1915 a return of less than 7 per cent. was confiscatory is consistent with the recent decisions of lower courts above cited—*including the six cited by the Supreme Court itself in the McCardle case*—holding that *now* a return of less than 8 per cent. would be confiscatory."

It may be consistent, as applied to particular and individual cases, but the Commission is not convinced that an 8 per cent. return is a general rule applicable to all cases.

Company's counsel also state (Brief, page 88) that::

> "In not one of those cases in which a utility was held entitled to earn a return of at least 8 per cent. were the risks of the utility business as great as they now are in the street railway business. If those utilities are entitled to a return of at least 8 per cent., this Company is entitled to more than 8 per cent."

This, in the Commission's opinion, by no means follows. It may be pointed out that in not a single case where a utility was held to be entitled to an 8 per cent. return, was that utility a street railway company. As far as this Commsision knows, there is not one in the country that is earning as much as a 7 per cent. return on the present day value of its property. The Commission cannot ignore the significance of that situation. Street railway companies have no reason to be more modest in asserting their rights than gas and electric and water companies, which, on the facts in their particular cases, have been held entitled to a return of 8 per cent. There must have been some reason, other than modesty or regard for the public's purse or even contracts establishing rates of fare, that has kept them from appealing for their rights in court, if their properties were being confiscated by a return of less than 8 per cent., in fact, by a return of less than 6 per cent. Perhaps the consideration that has kept them out of court has been the belief that they could not earn 8 per cent. at rates which the public would pay, and that the effort to get an 8 per cent. return, if allowed by the courts, would, through the operation of the law of diminishing returns, result in their earning even less than they are earning now.

It is true, as counsel states, that in not one of those cases in which a utility was held entitled to earn a return of 8 per cent., were the risks of the utility business as great as they now are in the street railway business. And it is, we believe, because of those very risks that capital is reluctant to invest in street railways, and that no new street railways are being built in the United States today. Witnesses for the Company (Messrs. Hoyt, Burroughs and Fenhagen) testified that an 8 per cent. return would be necessary to get capital to invest in

street railway properties, but none of them showed that any street railway company did or could earn that rate. As a matter of fact, none of them do. Therefore, according to the testimony, it is not possible to get capital, not only for the United Railways, but for any street railway in the country. Yet we do know that capital *is* forthcoming at fair rates of interest for well managed street railway companies which are giving adequate service to the public at reasonable rates, even if those rates do not yield 8 per cent. It may be true, however, that capital could not be obtained for the establishment of a complete, new railway system anywhere in this country.

SHOULD RISK INCREASE RATE OF RETURN.

We do not agree with counsel for the Company in their theory, that, because of the risks, "if those utilities are entitled to a return of at least 8 per cent., this Company is entitled to more than 8 per cent." This Commission feels that the risk of the business, which is largely due to automobile competition, is in fact the element which limits the rate of return which the Company can earn, rather than justifies an increasing return, in the same manner that it limits riding.

The risk which the railway industry now faces is the same risk that confronts any business or industry when new methods of doing a familiar thing developed. Regulation cannot protect regulated industries from that kind of risk. Sail was compelled to give way to steam on the seas. Even if sail had been protected by regulation it could not have been saved by increasing rates or by being granted a fixed return on the value of ships. Canals gave way to the steam railroads. Increased rates could not have saved them. The package freight business of the steam railroads is being taken by motor trucks, and the short distance passenger is being carried in increasing number by busses. The parcel post has taken the small package business from the express companies. The jobbing business in Baltimore is today giving way to direct dealing between manufacturer and retailer. The little electric railway which, in the middle eighties, ran from Huntington Avenue and Oak Street to Hampden and Woodberry, indicated the end of the horse cars and

the substitution of the trolley car, not only in Baltimore but all over the United States.

Now the street car is encountering the competition of the private automobile. That competition cannot be checked by any means now available. The street railway is still a necessary means of transportation and is the only means of handling passengers in large numbers at present available. But it certainly cannot follow that, because it is faced with a serious risk to its future, the risk itself entitles it to a greater return on the value of its property than are those utilities which have no such risk.

So long as the Company is performing a necessary service it is entitled to be compensated for that service by an amount which will cover its costs, and will yield a fair profit on the use of its property. And the Commission will authorize the Company to collect a rate which will yield that cost and profit, so long as it is reasonable and no more than the Commission feels the service is worth to the public. But the Company cannot depend upon regulation and increasing rates to save it from ultimate disaster, if, because of the automobile, or any other new agency of transportation, its service becomes obsolete, and the use of that service is confined to comparatively few people. The Company has been protected from jitney competition and its rates have heretofore been raised to meet increasing costs of rendering service, but there is a limit beyond which the Commission cannot go in permitting higher rates to meet, not increasing costs of doing business, but failure to earn a sufficient return, due to the falling off of business.

THE PROBLEM OF DEPRECIATION.

Counsel for the Company contend that the property rights of a utility include a return of 100 per cent. of the property used and consumed in the public service and a return on the value of the property used and not yet consumed.

The Commission believes that, like the right to a particular rate of return, the right of a utility to a return of 100 per cent. of the property used and consumed in the

public service, or the value of that property in money, varies with circumstances. These circumstances would naturally include the conditions under which the property was created and developed.

In the case before the Commission we have a transportation system built up of what originally were competing lines. The original company, the Baltimore City Passenger Railway Company, had the choice streets and was prosperous from the beginning. One line after another was established with the primary idea of competing with the original company, or with each other; or if not competing directly, of getting into what in those days was considered a profitable business. One company, the Lake Roland Elevated, was designed and built primarily to aid in the development of Roland Park. Whether a profit was made on the operation of that line or not was incidental; its real purpose was to help sell lots. Rights in streets were acquired indiscriminately and tracks laid without much more than guesses as to whether they ever would pay. Men conceived the idea that a railway in a particular part of the City would pay, raised the money and built it. Such was the case of the old Central Line which ran on Fulton Avenue and Lanvale and Preston Streets to a point near Greenmount Cemetery. Some of these lines never did pay. Lines were built that never would have been considered if a comprehensive system for the whole City was being laid out. Some stretches of these lines have been abandoned from time to time.

Then came the era of rapid transit, still in the competitive stage. The Baltimore Traction Company was formed by the purchase of two lines and a cable system was established. The competition of this company with the Baltimore City Passenger Railway Company was so keen that the Baltimore Street and Madison Avenue lines, from which the bulk of the traffic was being drawn by the new mode of travel, were cabled. This expenditure of millions was for the sole purpose of meeting competition. In the meantime other lines were being electrified. Then the Consolidated Railway Company was formed by a merger of the Traction Company lines and the lines of the Union Passenger Railway Company, known as the Perin lines, more effectively to compete with the Balti-

more City Passenger Railway Company. One after another of the independent lines was absorbed by one or the other of the two competing systems. Then, in 1899, eleven years before regulation of utilities was attempted in Maryland, the two systems were merged, forming the present system of the United Railways and Electric Company of Baltimore.

Throughout all this process much money was wasted, more was spent injudiciously in building parallel lines, and there were duplications of facilities all over the City. In those days, men who built the lines "took a chance." If their guess was a good one, they would get back the value of their property 100 per cent. and a return on that property while it was being used. If their guess was not good, they would lose. To this day no one knows to what extent depreciation was provided for, if it was provided for at all. Each company kept its books as it saw fit, and they showed what the officials of the companies wanted them to show. They were private concerns, organized solely for profit, and how they kept their accounts was nobody's business but their own.

Reference was made in the testimony in this case to a lot of old cars that had been burned up. Many of these were of the old horse car and early trolley types and although no claim was made for their value, the intimation was strong that their retirement should have been provided for through a depreciation allowance. The same suggestion applies to the cable system.

Company's counsel in explaining the exhibit of their witness in setting up a claim for $2,200,000, or about 4 per cent. on the value of the Company's depreciable property, as an annual allowance for depreciation, say:

> "In arriving at this total Mr. Hill noted, but did *not* allow for, several cycles of obsolescence of virtually all the Company's property and system within the last seventy years, including cycles of the horse car, which lasted thirty-two years, and the cable car, which lasted only seven years." (Brief, page 55.)

In view of the history of the Company, the manner in which its property was built up, the haphazard way in which lines were projected and built, and the motives which led to their building, the Commission can see no reason whatever why Mr. Hill should have allowed for such cycles of obsolescence. There was certainly no merit in his not doing so. It might have been proper for the companies making up the present system to provide for the obsolescence and retirement of their property at the time it was being used up, but there is no obligation, legal or moral, upon the street car riders of today to pay for the property involved in those several cycles of obsolescence. In fact, and in view of all the circumstances, it is doubtful if the car riders of an earlier day properly could have been called upon to pay for them. The Commission does not agree with the declaration of counsel (Company brief, page 49) that:

> "The utility is entitled to a return of *all* property *retired* (because of obsolescence, inadequacy, legislative requirement or what not), whether replaced or not, through periodic allowances out of earnings to provide in advance for the retirements,—certain to occur at an uncertain time."

As heretofore stated, it feels that the right here claimed varies with circumstances.

In the valuation case, the Commission found that the Company's depreciable property, as of December 31, 1923, was in approximately 85 per cent. condition. The Commission feels that the Company is entitled to have that particular property maintained in that per cent. condition, but that it is not entitled to rates which, through a depreciation account, will enable it to restore that property to 100 per cent. condition. If it desires to restore it to 100 per cent. condition, it may do so out of surplus and, of course, earn a return on the 15 per cent. restored. It may no more make up its past losses in property than it may make up its past losses in revenue due to insufficient rates.

PROVIDING FOR REMOTE CONTINGENCIES

In making an allowance for depreciation the Commission will endeavor to provide a fund out of which

retirements may be met as they occur, and also to create a reserve out of which ordinary obsolescence may be cared for. This will be conservative, because the Commission does not feel that car riders of today ought to provide for remote contingencies, involving unusual amounts, which, if they do occur, can be at least shared by the car riders of a future day. We do not feel that a depreciation account or reserve ought to be regarded as an insurance against possible contingencies, but should provide for the current and gradual consumption of the property from causes which are ascertainable.

The city of Chicago, in a brief submitted to the Interstate Commerce Commission in Case 15100 (118 I. C. C. 295), concerning depreciation charges of steam railroad companies and quoted with approval by that Commission, says of obsoloscence that there is "a kind of obsolescence which accompanies the normal progress of an art and which gradually, as years go on, destroys the value of property," but there is another kind "which springs up over night, unforeseen and abrupt, and terminates the life of property."

The Interstate Commerce Commission, in its report (118 I. C. C. 295), says:

> "The first kind of obsolescense, presently at work, is a factor of depreciation. The second kind is a mere contingency which may never occur. * * * According to the city (Chicago), contingences should be provided for by surplus reserves, or by insurance, or by amortizing the loss sustained over a reasonable period in the future. The latter process is particularly appropriate when property retired is replaced by a more efficient and economical substitute. * * *
>
> "It seems to us that the distinction which the city of Chicago draws between depreciation charges and insurance is valid. The function of the former is to account currently for the consumption or exhaustion of a service life of property from causes which are known to be in operation and the effect of which can be forecast with reasonable accuracy. The function of insurance, on the other hand, is to

afford protection against possible contingencies which cannot be foreseen and which may or may not ever occur."

Earlier in its report the Commission said:

"* * * depreciation accounting attempts only to place the burden of current losses in service value upon the current users of the property, which obviously is logical. * * * We are not here dealing with competitive industries, but with monopalistic or semi-monopolistic industries where public regulation is needed to protect the public interest. The choice is between permitting such an industry to charge rates which will enable it to make its depreciation charge rates which will enable it to make its depreciation charges large enough to meet every conceivable contingency, and holding its depreciation charges down to a more moderate basis, but permitting the industry, in the case of some sudden and unexpected development, to spread the cost of retirements over a period in the future. In our opinion the later course is the preferable one."

The Commission also declared:

"It is a mistake to assume that inventions or improvements in the art invariably, or even as a general rule, have a sudden effect upon an industry. Their effect is often quite gradual, in view of the necessity for a period of experimentation, development and preparation for manufacture on a large scale. Past experience also furnishes some gauge of the probable effect of progress in the art."

In view of the decision of the Supreme Court in the case of Board of Public Utility Commissioners (N. J.) v. New York Telephone Co. (271 U. S. 23) this Commission would hesitate to allow any large depreciation reserve to be built up to provide for contingencies that may never occur. The public cannot be expected to take all the risks of this or any other utility business.

BASIS FOR DEPRECIATION CHARGES

The Commission believes that it might be more logical to base the annual allowance for depreciation upon the

cost of depreciable property, rather than upon gross revenues. The relation between gross revenues and depreciation is remote and indirect while there is a direct relation between the cost of a piece of property and the amount that ought to be set aside for its consumption by use.

However, the allowance which this Commission has made for depreciation, 5 per cent. of the gross revenues, has provided fairly well for current depreciation and retirements and has permitted the accumulation of a reserve, amounting to $1,413,793 on August 31, 1927. This percentage of gross revenues for depreciation has been set up by the Company since 1912, and in that time it had amounted to $10,537,960. If the Company had set up this amount of 5 per cent. of its gross revenues from the time of consolidation in 1899, which it had a perfect right to do, it would have yielded $14,427,566, which would have provided for current depreciation and retirements and would have left in the reserve $1,895,963 for accrued depreciation. (People's Council Exhibit No. 42, sheet 3.)

The Company now claims that an amount equal to 4 per cent. of the value of its depreciable property should be set up, which would yield approximately $2,200,000 a year. People's Counsel Exhibit No. 42, sheet 4, shows that if this plan had been followed since 1899, the year of the consolidation, it would have amounted to $44,628,233. Retirements, in that period, as shown by People's Counsel Exhibit No. 42, sheet 3, were $12,531,603, which would have left the sum of $32,096,630 in the reserve.

In spite of the heat with which Company's counsel attack this latter showing, the Commission feels that it is illuminating. It is purely hypothetical, of course, and there are not sufficient data completely to prove its assumptions. But we do know the value of the Company's depreciable property from January 1, 1924, to January 1, 1927, and the actual retirements in that period. On the basis of these actual figures for the three years, the Company's theory of 4 per cent. on the value of depreciable property projected 10 years in the future, gives these illuminating figures:

ESTIMATED DEPRECITTION RESERVE BASED ON 4% OF DEPRECIABLE PROPERTY.

Year	Additions	Retirements	Amount of Depreciable Property at end of year.	Average Depreciable Property.	Depreciation at 4%	Accumulated Reserve.
Valuation as of December 31, 1923.....			$54,000,702	.....	.....	
1924.....	$1,635,284	$802,771	$54,833,215	$54,416,958	$2,176,678	$1,373,907
1925.....	1,399,663	1,085,565	55,147,313	54,990,264	2,199,611	2,487,953
1926.....	828,609	969,950	55,005,972	55,076,642	2,203,068	3,721,071
Total at Dec. 31, 1926.....	$3,863,556	$2,858,286	$55,005,972	.....	$6,579,357	$3,721,071
1927.....	1,287,852*	952,762*	55,341,062	55,173,517	2,206,941	4,975,250
1928.....	1,287,852	952,762	55,676,152	55,508,607	2,220,344	6,242,832
1929.....	1,287,852	952,762	56,011,242	55,843,697	2,233,748	7,523,818
1930.....	1,287,852	952,762	56,346,332	56,178,787	2,247,152	8,818,208
1931.....	1,287,852	952,762	56,681,422	56,513,877	2,260,555	10,126,001
1932.....	1,287,852	952,762	57,016,512	56,848,967	2,273,959	11,447,198
1933.....	1,287,852	952,762	57,351,602	57,184,057	2,287,360	12,781,796
1934.....	1,278,852	952,762	57,686,692	57,519,147	2,300,766	14,129,800
1935.....	1,287,852	952,762	58,021,782	57,854,237	2,314,169	15,491,207
1936.....	1,287,852	952,762	58,356,872	58,189,327	2,327,573	16,866,018
Total at Dec. 31, 1936.....	$16,742,076	$12,385,906	$58,356,872	.....	$29,251,924	$16,866,018

*Estimated on average of 1924, 1925 and 1926.

At the outset, the amount set aside for depreciation during the years 1924, 1925 and 1926 would have amounted to $6,579,357, of which amout $2,858,286 would have been required for the actual retirements of property at valuation prices. This would leave $3,721,071 in reserve.

Projecting these figures ten years into the future and allowing annual retirements at the average for the three years, 1924 to 1926 inclusive, or $952,762, would produce a total of $22,672,567 set aside for depreciation, of which $9,527,620 would have been used for retirements, leaving in the reserve $16,866,018. This would be enough to retire practically the entire rolling stock equipment of the Company.

These figures are illustrative only. It might happen that the annual retirements for the next ten years would greatly exceed the average of retirements for the three years, 1924 to 1926, inclusive. But even if these retirements were doubled, the Company still would have a reserve of $7,338,398.

DEPRECIATION AND MAINTENANCE.

On this showing, the Commission feels that the amount for depreciation claimed by the Company is too high. As already stated, the percentage of its gross revenues set aside has provided reasonably well for its current depreciation and retirements. Moreover, there is a broad twilight zone between depreciation and maintenance, and it may well be (and without any impropriety) that the maintenance account has been used to a certain extent to provide for depreciation. Indeed, some commissions and corporations combine the depreciation and maintenance accounts. The allowance for this joint account for electric railways runs usually from 14 to 17 per cent. of gross revenues. For example, the surface lines of the Interborough Rapid Transit Company of New York are allowed 14 per cent., of which maintenance takes up 12 per cent., while for the subways, which are extremely expensive to maintain, 17 per cent. is allowed for the joint account. Of this, 12 per cent. is allowed for maintenance, but the excess of actual maintenance expenditures over

this allowance is charged to the depreciation reserve. For 1927 the United Railways was allowed approximately 16 per cent. for maintenance and depreciation, of which approximately 11 per cent. was for maintenance and 5 per cent. for depreciation. These two accounts yielded in 1927 a total of $2,589,736. It is generally recognized that the property of the Railways Company is well maintained.

Any increase in the gross revenues resulting from an increase in fares would increase the amounts that would be set aside for depreciation and maintenance. On the basis of the several rates of fare heretofore mentioned, the amounts to be set aside for depreciation during 1928 on the 5 per cent. gross revenue basis, allowing for a 2 per cent. decrease in riding, would be as follows:

Rate of Fare	Amount for Depreciation
8c straight	$843,955
9c cash, 5 for 40c	851,585
9c cash, 3 for 25c	883,544
10c cash, 3 for 25c	887,134
10c straight	1,046,929

People's Counsel's Exhibit No. 42, sheet 2, shows that the average annual retirements from 1912 to 1927 have amounted to $555,664.90.

Therefore, the Commission at this time will not make any change in the method of computing the allowance for depreciation, but will continue it at 5 per cent. of gross revenue.

VALUE ON WHICH RETURN IS COMPUTED.

In Case No. 533, decided February 1, 1928, the Commission fixed the value of the Company's property at $75,000,000 as of December 31, 1923, of which sum $5,000,000 was for easements. The Company claimed that, subsequent to the date of the valuation, net additions had been made which would add $1,005,270 to the above value. People's Counsel, questioning the amount of increased value claimed by the Company, attacked the bookkeeping methods of accounting for additions where old trackwork is replaced and declared that the $1,005,270 should

be nearer $200,000. His witnesses also pointed out that a decrease in construction costs had taken place between 1923 and 1927 and that this factor, if given the same weight as was given the cost of reproduction by the Commission in fixing its value, would tend to indicate a decrease rather than an increase in the 1923 value. After considering all facts which to it seem relevant, and particularly as the relatively small amount in dispute might easily be offset by a slight fluctuation in price levels, the Commission is of the opinion that the proper value to be used, at the present time, as a test of the reasonableness of the rates to be fixed in this proceeding, is $75,000,000.

THE SITUATION AS TO HALETHORPE.

Application was made to the Commission by counsel for the communities of Halethorpe, Arbutus and Leeds, for an order extending the single fare zone to Halethorpe, on the ground that the present requirement of two fares on the Halethorpe line is an unreasonable discrimination against the patrons of that line, and that such discrimination is contrary to the provisions of the Public Service Commission Law.

In their brief, filed in the emergency rate case, they said:

> "There are twelve lines of the United Railways & Electric Company extending to and into the suburbs of Baltimore County. The Halethorpe line is the shortest of them all from the center of the City of Baltimore. The first fare zone of the Halethorpe line is the shortest of them all. The first fare zone of three of the lines is just slightly shorter than the total two fare zone of the Halethorpe line and materially longer than the first fare zone of the Halethorpe line. The first fare zone of the other eight lines is longer than the total two fare Halethorpe line. The first fare zone of five of the latter eight lines extends a substantial distance beyond the Baltimore City line and into Baltimore County. Four of the latter eight lines have no second fare zone whatever and three of them extend into Baltimore County. The cost of service, therefore to the ap-

plicant on the whole two fares on the Halethorpe line is materially less than the cost on the one fare zone of eight of the other suburban lines and slightly more than on the first fare zone of the other three lines, but very materially less than the two fare zones on the said three remaining lines.

"The above facts show clearly an undue discrimination against the communities of Halethorpe, Arbutus and Leeds and an undue and unreasonable preference in favor of all the other suburban lines of Baltimore City being eleven in number."

Counsel also cited an opinion of the United States Supreme Court, in the case of the Portland Railway, Light & Power Company v. Railroad Commission of Oregon (229 U. S. 397), which affirmed the action of the Supreme Court of Oregon in a ruling to the effect that the charging of two fares to one community and one fare to another, when the costs of service to the two communities were substantially the same, and both communities were practically the same distance from the center of the city of Portland, was an unlawful discrimination. They also cited Sections 362, 365, 369 and 373 of Article 23 of Bagby's Annotated Code of Maryland to indicate that Halethorpe, Arbutus and Leeds were being unreasonably discriminated against.

They further cited the opinion of the Commission in the seven and one-half cent fare case, filed May 26, 1924, as recognizing "an unlawful locality discrimination upon facts analogous in every particular to Halethorpe in this case," and the action of the Commission in extending the single fare zone as remedying that discrimination.

In that opinion the Commission said:

"The residents of the eastern and southeastern sections of the City at present can ride only three miles from the center of the City for one fare, while in practically all other sections it is possible to ride from five to eight miles within one fare zones."

To that extent the Commission, in that case, did recognize the *length* of the ride from the center of the City as some measure at least, of its value. It does not feel,

however, that this rule can be applied in all cases, but that conditions, other than length of ride, may be controlling.

It is a fact, however, that the Legislature, in the Annexation Act of 1918, did draw the new southwestern boundary line of the City much closer to the old city than it did in other sections, with the result that the car riders in the southwestern section of the City get a much shorter ride for their single fare than do the people of any other section. The Commission does not feel that the legislative discrimination against that territory lying to the southwest of the old city boundary ought to deprive the people of that territory of as great a measure of railway service for their single car fare as is received by those more fortunately situated with relation to the City.

While it is true that the purpose of the Commission in extending fare zones in previous cases was to extend them only to the new city limits, and to make the city line the limit of the single fare zone, it recognizes the fact that in some cases those zones were extended substantial distances beyond the city boundary. In most cases these extensions were made to meet special conditions, and the Commission did not, and does not now, consider them precedents for general extensions of single fare zones beyond the city limits. It is impossible to lay down any exact measure of distance for a single fare.

The Commission feels, after considering all the elements of the situation, that the case of Halethorpe justifies a departure from the general rule under which the first fare zone is limited to the City boundary. It is true that the people in the southwestern section of the City *may* travel as far as the residents of any other section *within* the city boundaries. But as a matter of fact the greater number of them have no reason to travel much, if any, distance beyond the business section of the City, which center is, approximately, at Baltimore and Charles Streets. From that point the airline distance to the southwestern city boundary is only a fraction more than three miles, making it the shortest single fare zone on any of the suburban lines of the Company, while the second fare zone in which Halethorpe, Leeds and Ar-

butus are located is only 1.87 miles. The total distance from the center of the City that may be traveled on the Halethorpe line is a fraction more than five miles, while the single fare zones on nine other lines extending into the suburbs are longer than the two zones to Halethorpe. As pointed out by counsel, the first fare zones of six of these nine lines extend a substantial distance beyond the Baltimore City limits. Five of them have no second fare zones whatever.

The Commission feels that this situation has considerable weight in determining the fare zones on the Halethorpe line, and that if the distance is to be considered at all in fixing a single fare zone, that distance ought to be approximately five miles from the center of the City. That would put Halethorpe in the single fare zone class and put it on a parity with other single fare zones. It would also remove any complaint of discrimination.

The Commission will therefore direct that the single fare zone be extended to the village of Halethorpe.

THE WEEKLY PASS.

Mr. Clark, counsel for the People's Committee, contended very vigorously for the establishment over the system of the Company of the weekly pass and Sunday pass, which have been tried in other cities as a means of increasing revenues. In its opinion in the original valuation case, No. 533, filed March 9, 1926, the Commission said:

> "As to the weekly pass proposition, this Commission feels it would be unwise to require the Railways Company to embark on such an experiment. Proponents of the weekly pass idea testified that it was 'a gamble,' that there was no way of checking the results of the pass upon the revenues of those companies in other cities (which had adopted it), but their general impression was that it had been helpful.
>
> "In view of the testimony submitted, this Commission does not feel justified in requiring the Company to issue such a pass or ticket, and it would hesitate to approve such a plan if it were proposed

by the Company, on the ground that it would be a marked departure from the plan of measured service, under which the patron of a utility pays for what he receives, and toward the plan of unlimited service for a fixed charge, or flat rate."

In the nearly two years which have elapsed since that was written, the Commission has not been shown that the weekly pass has had a beneficial effect upon the revenues of any company which adopted it. Nor has it been shown that there is any manner of determining or checking *any* effect it has on revenues. Therefore, the Commission sees no reason for changing its position on the subject.

COLLATERAL MATTERS.

Several cases dealing with matters of service were taken up by the Commission for public hearing in connection with the rate case, and were heard on November 28, 1927.

The Merchants Association of Northeast Baltimore, represented by Mr. John W. Gray, requested that the Commission require the Company to issue and receive identification checks to and from Chester Street bus line, good for a continuous ride through the first fare zone; that a more frequent service be maintained; and that the bus line be extended to Harford Road and North Avenue, thus giving passengers the benefit of transfers with the Harford Road line and both branches of the No. 13 line.

The Chester Street bus line was established by order of the Commission in the 1924 rate case (Case No. 1682). The purpose in having the line established was to afford a quick and easy means for the people of Northeast Baltimore to reach their places of employment in Highlandtown and Canton without the necessity of coming toward the center of the City, transferring, and going back again. It was not contemplated that this line should take care of the travel originating north of North Avenue on the Harford Road line. If the request of the Merchants Association of Northeast Baltimore should be granted the effect would be that the busses of the Chester Street line would receive capacity loads at or near their terminal and before they entered the territory they were actually

intended to serve. That would defeat the very purpose for which the bus line was established. The request is therefore denied.

A number of petitioners, represented by Mr. Harry M. Berman, requested the establishment by the Company of bus service on O'Donnell Street between 15th Street and Carnegie Avenue, a distance of about one and one-half miles. The evidence submitted by the Company showed that there were 31 houses in the area to be served, and that a considerable portion of the territory adjacent to O'Donnell Street is occupied by cemeteries. Mr. Berman, in his presentation of his case, said:

> "It may be true that it would not justify the car company to run these busses, but the people have to walk, that's the gist of the proposition."

The superintendent of bus transportation for the Railways Company testified that it would cost $13,500 a year to establish service with one bus and that with a fare of ten cents, the estimated revenues would be $8.00 a day, or $2,920 a year, so that the service would be operated at a loss of more than $10,000 a year.

In view of the situation as outlined by Mr. Berman and by the Company's witness, the Commission feels it would not be justified in ordering the establishment of service requested by Mr. Berman's clients.

The Morrell Park Improvement Association and the Lansdowne Improvement Association, represented respectively by Messrs. William H. Lawrence and Lester L. Barrett, requested an order requiring the Company to issue free transfers to and from the No. 27 car line and the Lansdowne bus.

The car line ends at Morrell Park. The bus line, although a subsidiary of the United Railways Company, is not a part of the railway system. In the rate case before the Commission, the expenses and the revenues of The Baltimore Coach Company, which owns the Lansdowne bus line, were not considered. The bus line was bought by the Coach Company from a private operator for the purpose of serving Lansdowne and with the hope of making that service profitable. It was never intended to operate it as a part of the railway system.

The testimony shows that the bus line is now being operated without profit, and to compel the Railways Company to issue free transfers to and from the bus line would, in effect, be requiring the Company to give service over a line, not a part of its system, for nothing. The Commission does not regard that as reasonable. It cannot see its way clear to issue such an order.

THE RATE OF FARE.

From the foregoing tables showing the various rates of return which will be yielded by fares ranging from eight cents flat to ten cents flat, it will be seen that allowing for a 2 per cent. decrease in riding, a flat eight cent fare would yield only 5.48 per cent. return on the value of the Company's property, on the Commission's basis of calculation, and a cash fare of nine cents with five tokens for forty cents would yield only 5.64 per cent., which returns hardly seem adequate. The next lowest practicable rate of fare that could be fixed is eight and one-third cents, which would of necessity be a token fare on the basis of three fare tokens for twenty-five cents. That would necessitate the car rider paying nine cents for a single ride if he pays in cash. At the present time 96.4 per cent. of the full fare passengers use tokens, while only 3.6 per cent. pay cash. On this basis, and allowing for a 2 per cent. falling off in riding, the rate of return would be 6.31 per cent.

As the inclusion of Halethorpe in the single fare zone is estimated to result in a decrease of $40,000 a year in revenues, this would reduce the rate of return to 6.26 per cent. If riding should fall off any further this rate of return would be further decreased.

The Commission believes that this rate of fare will be fair to the public and will yield a fair rate of return to the Company, making due allowance for possible decrease in riding. This conclusion, in so far as the Company is concerned, is supported by the fact that few, if any, street railway companies are earning more than the rate of return which it is estimated will be produced by this fare.

The Commission will therefore deny the Company's application for a ten cent flat fare and will fix a rate of fare at eight and one-third cents on a token basis or nine

cents cash. There will be no change ordered in the commutation, school, or other special classes of fares except in the half fare for children, which will be made five cents.

A table showing the estimated revenues and expenditures of the Company under the new rate of fare is given herewith.

ESTIMATED RETURN FOR 1928.
9c Cash Fare—3 Tokens for 25c—½ Fare 5c.
No Change in Other Classes.
Estimated 2% Falling Off in Full Fares.

		No. of Passengers	Revenues
Cash Fare	@ 9c.....	7,180,730	$ 646,266
Token Fare	8 1-3c...	191,753,540	15,979,461
Total Full Fares		198,934,270	$16,625,727
1st County Zone	4½c....	2,600,000	117,000
2nd " "	5c.....	270,000	13,500
3rd " "	5c.....	45,000	2,250
Bethlehem Steel Tickets	5c.....	1,600,000	80,000
Miscellaneous	.....	8,000	400
Half Fares	5c.....	8,080,000	404,000
School	5c.....	3,860,000	193,000
Total		215,397,270	$17,435,877
Other Revenue			235,000
Total Operating Revenue			$17,670,877
Operating Expenses		$10,303,944	
Depreciation		883,544	
Taxes			
Property, etc.		487,110	
Park Tax		1,168,204	
Income Tax		138,469	12,981,271
Operating Income			$ 4,689,606
Non Operating Income			171,000
Gross Income			$ 4,860,606
Deductions from Gross Income			3,445,000
Net Income			$ 1,415,606
Amount Available for Return			$ 4,731,606
Per cent. of Return on Base of $75,000,000.00			6.31%
Deduct $40,000 from Gross Revenues for Halethorpe Zone extension, giving a rate of return of			6.26%

Complaint has been made of the service which the Company has been giving in the last several months, and officials of the Company have frankly admitted that service has been cut to meet the falling off in revenues due to a loss of traffic. With the increased fares herein allowed, the Commission will expect the service to be improved forthwith, the headway between the cars decreased, and other improvements necessary properly to serve the public brought about as rapidly as possible.

An order will be passed in accordance with the conclusions herein.

ORDER NO. 12639.

Before the Public Service Commission of Maryland.

In the Matter of the Application of the United Railways and Electric Company of Baltimore for the Establishment of a Permanent Rate of Fare of 10 Cents and for the Establishment of a Temporary Emergency Rate of Fare Pending the Establishment of Such Permanent Rate of Fare.

CASE NO. 2648.

The above entitled case having been duly heard and submitted and full investigation of the matters and things involved having been had and the Commission, on the date hereof, having rendered and filed an opinion containing its findings of fact and conclusions therein, which said opinion is hereby referred to and made part hereof,

It is, therefore, this 10th day of February, in the year Nineteen Hundred and Twenty-eight, by the Public Service Commission of Maryland,

Ordered: (1) That the application of The United Railways and Electric Company of Baltimore filed herein

on August 1st, 1927, for the establishment of a flat fare of ten cents cash be and it is hereby denied.

(2) That from and after midnight of February 12th, 1928, and until the further order of the Commission, The United Railways and Electric Company of Baltimore shall be permitted to charge and collect for the transportation of persons over its several street railway lines, in Baltimore City and vicinity, a base rate fare of eight and one-third cents when tickets or fare checks are purchased, or nine cents cash, for the conveyance of each passenger over twelve years of age, and five cents for each child between the ages of four and twelve years, between any of the points designated in the schedule of the said Company filed with the Commission pursuant to the requirements of the Commission's Order No. 8240 entered in Case No. 1682 on May 26th, 1924, or between intermediate points, in either direction, on any of such lines, except in so far as the zones on any of the said lines are hereinafter modified or changed.

(3) That the first fare zone on the Halethorpe line be and it is hereby extended to the terminus of the said line at Halethorpe, effective from and after midnight of February 12th, 1928.

(4) That during the period this Order is in effect The United Railways and Electric Company of Baltimore shall sell on its cars and at its offices and waiting rooms tickets or fare checks which shall be honored for passage on its cars, at the rate of eight and one-third cents each, which said tickets or fare checks shall be sold on the cars in quantities of three (or more, in the option of the company), and should the conductor of a car at any time be unable for any reason to sell a passenger desiring to purchase them at least three tickets or fare checks, then such passenger shall be required to pay but eight cents fare.

(5) That except as hereinbefore changed, the present rates, fares and charges of The United Railways and Electric Company of Baltimore be and they are hereby continued in effect for the period of this Order.

(6) That this Order shall be effective from and after midnight of February 12th, 1928, and until the further order of the Commission.

(7) That The United Railways and Electric Company of Baltimore shall furnish to this Commission accurate and complete statements under oath, and in convenient form, setting forth the number of revenue and transfer passengers carried, and the number of car miles operated, the cash receipts from operation and other sources, and the operating and other expenditures of the Company, all set forth in the manner prescribed by the rules of this Commission for accounting by street railway companies, so soon as may be reasonably practicable and convenient after the end of each calendar month during the period this Order remains effective, and in no event later than the last day of the next succeeding calendar month, covering the operations of the Company during the next preceding month.

(8) That the right of The United Railways and Electric Company of Baltimore to charge and collect the fares in this Order prescribed shall be held subject at all times during the period the said Order remains in effect to the right and power of this Commission to reopen this case in the light of the facts disclosed by the monthly reports aforesaid, or of other facts otherwise coming to the attention of this Commmission, and modify the rates of fare by this Order authorized to be charged and collected by the Company.

And It Is Further Ordered: That a copy of this Order and a copy of the opinion hereinbefore referred to and filed herewith be forthwith served upon the said The United Railways and Electric Company of Baltimore, and that the said Company, within ten days from the date of the service of such copy, advise this Commissionin writing whether or not it will accept and abide by the same.

HAROLD E. WEST,

J. FRANK HARPER,

STEUART PURCELL,

Commissioners.

(3)

ANSWER TO BILL OF COMPLAINT.

(Filed March 30, 1928.)

In the Circuit Court No. 2 of Baltimore City.

The United Railways and Electric Company of Baltimore

vs.

Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, Constituting the Public Service Commission of Maryland.

ANSWER OF THE PUBLIC SERVICE COMMISSION OF MARYLAND.

To the Honorable the Judge of said Court:

The answer of Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, members, constituting the Public Service Commission of Maryland (hereinafter referred to as the Commission), to the Bill of Complaint of The United Railways and Electric Company of Baltimore (hereinafter referred to as the Company), filed against said Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, constituting the Public Service Commission of Maryland, respectfully shows:

(1) The allegations of paragraph 1 of the Bill are admitted.

(2) The allegations of paragraph 2 of the Bill are admitted.

(3) The allegations of paragraph 3 of the Bill are admitted.

(4) The allegations of paragraph 4 of the Bill are admitted.

(5) The allegations of paragraph 5 of the Bill are admitted.

(6) It is admitted that the Commission found (1) that the present fair value of the Company's property used in the public service is $75,000,000 (2) that the annual return that can be reasonably be expected by the Company from the rates fixed by the said Order is $4,691,606, and (3) amounts to a return of 6.26 per cent. on a fair value of the Company's property. The remaining allegations of said 6th paragraph of the Bill are denied.

(7) Answering such allegations of fact, as distinguished from inferences of fact, as are contained in the 7th paragraph of said Bill, the Commission says: That the issues of fact presented by the Company's application as of August 1st, 1927, and those arising in the course of the hearings had thereon and decided in the Commission's Opinion or Order, were not few but many. The Commission admits that the fair value of the Company's property had been exhaustively investigated by the Commission in the Valuation Case under Section 30 of the Public Service Commission Law, and that a valuation had been finally ascertained as of December 31st, 1923, of $77,000,000, including a valuation of the easements of the Company in the amount of $7,000,000.

A bill having been filed by the then People's Counsel to set aside the Order of the Commission fixing this valuation as unlawful and unreasonable, by reason of the inclusion of an allowance for the value of easements, the Circuit Court of Baltimore City sustained the Order of the Commission. On appeal to the Court of Appeals that Court neither affirmed nor reversed the decree below, but remanded the case for further proceedings to determin the value to be allowed for easements, in view of the fact that the method theretofore followed by the Commission in their evaluation had reflected, as the Court of Appeals found, the earning power of the easements.

This question of the value of easements was reheard by the Commission and decided by it in an Opinion filed and Order No. 12630, of which the Opinion was made a part, passed on February 1st, 1928, the total value of the property of the Company as of December 31, 1923, being found as $75,000,000, which was the result of the re-

duction of the allowance made for easements from $7,000,00 to $5,000,000. The entire record in said Valuation Case was offered in evidence at the hearings on the Company's application of August 1st, 1927.

The Commission further admits that in four previous rate cases before the Commission between 1918 and 1924, questions as to the Company's operations, revenues, expenses and so forth had been exhaustively investigated and the facts fully ascertained by the Commission, and that it has been kept informed as to such matters by periodic reports filed with it by the Company pursuant to Orders of the Comimssion in these various rate cases. The Commission further avers that while in the Valuation Case and in some of the Company's rate cases, the Company introduced evidence as to the fair rate of return which it should be allowed, this question was neither relevant nor material to the proceedings then involved, as the question was not before the Commission for determination.

(8) Answering the allegations of the 8th paragraph of the Bill, the Commission denies the same, and further answering the allegations of said paragraph the Commission specifically avers:

(a) The maximum rates of fare which by said Orders the Company is now permitted to charge and collect, are adequate to provide for the necessary expenses of its public service and for the consumption of its property employed in such service and are adequate to yield a fair return upon the fair value of its property so employed.

(b) The percentage which the Commission found would be the rate of return upon the fair value of the Company's property yielded by the fares established by said Order was adopted by the Commission upon considerations bearing a true relation to the fairness of a return under the facts and circumstances and is an adequate rate of return to compensate the Company for the use of its property in the public service.

(c) The amount which the Commission determined would be a proper annual allowance out of earnings to provide for depreciation and retirement of the Com-

pany's property used in the public service, is reasonable and adequate for that purpose and was fixed by the Commission upon a fair and proper basis.

(d) Proper allowance was made in determining the present value of the Company's property upon which the rate of return from the rates established must be calculated, for the changes in value of its property since January 1st, 1924, and for additions and retirements since said date.

(e) The Commission lawfully and properly required the Company to abolish the second fare upon its Halethorpe line.

(9) The Commission denies the allegations of the 9th paragraph of the Bill.

(10) The Commission denies the allegations of the 10th paragraph of the Bill.

Wherefore, having fully answered said Bill of Complaint, these defendants pray that the Bill may be dismissed with costs.

THOMAS J. TINGLEY,

RAYMOND S. WILLIAMS,

Special Counsel to the Public Service Commission of Maryland.

CARVILLE D. BENSON,

JAMES K. CULLEN,

Counsel for the Communities and Citizens of Halethorpe, Arbutus and Leeds.

HAROLD E. WEST,

Chairman of the Public Service Commission of Maryland.

State of Maryland, City of Baltimore, To Wit:

I hereby certify that on this 30th day of March, Nineteen Hundred and Twenty-eight, before me the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared Harold E. West, Chairman of the Public Service Commission of Maryland, and made oath in due form of law that the matters and facts set forth in the aforegoing Answer are true to the best of his knowledge, information and belief.

Witness my hand and notarial seal.

EVELYN M. WYNIGER,

(Seal.) Notary Public.

My Commission expires May 6, 1929.

(4)

OPINION.

Filed May 10, 1928.

In the Circuit Court No. 2 of Baltimore City.

The United Railways and Electric Company of Baltimore
vs.
Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, Constituting the Public Service Commission of Maryland.

Henry H. Waters, Venable, Baetjer & Howard, Haman, Cook, Chesnut & Markell and Joseph C. France for United Railways & Electric Company.

Thomas J. Tingley and Raymond S. Williams for Public Service Commission.

Carville D. Benson and James K. Cullen for people of Halethorpe.

Linwood L. Clark for People's Corporation.

William A. Toole for State Committee of The Socialist Party of Maryland.

OPINION.

ULMAN, J.—

Four questions are presented for judicial review in this case, viz.:

I.—The Commission's order limits company rates to yield 6.26 per cent. on value of company's property. Is this unreasonable and/or confiscatory?

II.—Commission's order permits the company $883,544 as an annual allowance to provide for depreciation and retirement of company's property. Company claims that a proper annual allowance for such purposes would be $2,200,000. Is the action of the Commission in this respect unlawful?

III.—In determining the present value of company's property to be $75,000,000 the Commission made no allowance for net additions since its valuation as of January 1, 1924. Was this action of the Commission unlawful!

IV.—Was the order of the Commission in abolishing the second fare to Halethorpe unlawful?

Jurisdiction of This Court and Its Powers of Review.

The parties to this proceeding seem to be in substantial accord as to the scope of judicial power in this proceeding. "The power of the Commission to fix reasonable rates is legislative, the functions of the Court in reviewing the actions of the Commission are distinctly judicial and are exercised only for the purpose of determining whether such actions of the Commission is unreasonable or unlawful." "Under an application to the Court for an injunction restraining the exercising of an order of the Commission, the Court has no authority to determine what would be a reasonable rate for the service required, or to establish rates, but its power is limited to the determination of the question whether the rates fixed by the Commission are unreasonable or unlawful, and until it is made to appear by clear and satisfactory evidence that the action of the Commission is unreasonable or unlawful, the Court is without power to impose any restriction upon the execution of the Commission's order." The order of the Commission "is a legislative mandate which is reinforced by the fact that the Commission is a tribunal erected by law, informed by experience and assisted by a trained corps of subordinates."

Public Service Commission vs. Northern Central R. R., 122 Md. 355; Havre de Grace Bridge Company vs. Public Service Commission, 123 Md. 16; West vs. Byron, 153 Md., —, 138 Atlantic Rep. 404.

In spite of the vast number of judicial opinions which have been handed down since 1898, the fundamental rule in rate cases as expressed by the Supreme Court of the United States in that year in the case of Smyth vs. Ames, 169 U. S. 466, has never been changed. It is that "What

the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience." • • • And that "What the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered • • • are reasonably worth."

Introduction to Consideration of the Four Questions Involved in This Case.

Questions I and II above are so inextricably bound together that logical treatment demands that Question II be considered first.

If company is entitled to set apart any portion of its earnings for the creation of a depreciation reserve, it necessarily follows that the amount of such earnings remaining as return on value will be greater or less as the amount so set apart for depreciation reserve is less or greater. To illustrate, company claims the right to set apart for depreciation reserve $2,200,000 per annum. Commission has determined that a reasonable allowance for depreciation reserve is $883,544. The difference between these two sums, $1,316,456, amounts to 1.75 per cent. on the value of company's property or rate base. Commission has decided that company is entitled to earn 6.26 per cent. on said rate base; and has calculated that company will do so by charging the fares fixed by Commission. But that calculation includes the aforesaid allowance of $883,544 for depreciation. If, for that figure, there should be substituted company's claim of $2,200,000 the percentage of return on rate base be 6.26 per cent. minus 1.75 per cent., or 4.51 per cent. See opinion of Commission, page 37. On the other hand, company, in its Exhibit No. 24, shows that a ten cent fare would yield a return at the rate of 7.44 per cent. on said rate base. But that computation includes an allowance of $2,200,000 for depreciation. Manifestly, if there should be substituted Commission's depreciation figure of $883,544 the resultant return would be 7.44 per cent. plus 1.75 per cent., or 9.19 per cent.

Therefore, before it is possible to determine what percentage of return will result from any given rate of

fare, it is necessary to decide the amount of a legally proper depreciation reserve.

QUESTION II.

Was the Action of Commission In Fixing Depreciation Reserve at $833,544 *Lawful?*

A.

It is conceded that the setting aside of a proper amount for depreciation reserve is not only the right of the company, but that, in the case of a public service corporation at least, it is its duty to its bond and stockholders and to the public.
Knoxville vs. Water Co., 212 U. S. 1, 13-14.

(1) *Should the amount of depreciation reserve be based upon the value of company's property or upon its cost?*

"If the rate base is present fair value, then the depreciation base as to depreciable property is the same thing. There is no principle to sustain a holding that a utility may earn on the present fair value of its property devoted to public service, but that it must accept and the public must pay depreciation on book cost or investment cost, regardless of fair value."

Michigan Public Utility Commission vs. Michigan State Tel. Co. 228 Michigan 653; Minnesota Rate Case, 230 U. S. 352, 454; Brush Electric Co. vs. Galveston, 262 U. S. 443, 445; Georgia Railway vs. Railroad Commission, 262 U. S. 625-633.

It is urged by counsel for Commission that while the language used in the Federal cases above cited may justify the conclusion reached, the precise point now under consideration was not passed upon in those cases. A careful reading of these cases gives some force to that argument. Against it, however, are not only the Michigan case cited, but at least three other cases (one from the highest Court in Kansas) which counsel for Commission have, with commendable frankness, cited on page 81 of their brief. Moreover, the rule as stated, commends itself to reason. We have already seen how

intimately blended are rate of return and depreciation reserve. In the instant case, shifting from Commission's allowance to company's claim as to depreciation allowance makes a difference of 1.75 per cent. in rate of return. To this Court it seems inevitable that the same measuring rod, viz., present value of property, should be used as the base for the determination of both of these intimately related and inter-dependent results. In reaching this conclusion the Court is not unmindful of the contrary opinion of the Interstate Commerce Commission in cases No. 14700 and No. 15100 dealing with depreciation charges of telephone and steam railway companies, decided November, 1926. The opinion of the Interstate Commerce Commission in these cases does proceed upon the accounting theory that depreciation reserve should be based upon a percentage of costs or "ledger values." See said opinion, page 375; and it is true, as urged by counsel for the Public Service Commission herein, that the American Telephone and Telegraph Company has so kept its books since 1914; and it is also true that the Public Service Commissions of Missouri, Illinois and Wisconsin have approved this system. Nevertheless, the accounting system so approved by said several commissions does not reflect actual facts. As said by Judge Rose in Chesapeake and Potomac Telephone Co. vs. Whitman, 3 Fed. 938-942, "Books so kept would show the cost of company's property at any particular time. In the absence of great changes in value, such cost, due allowance being made for depreciation, would be a fairly accurate measure for present value." The significance of this quotation, in the opinion of this Court, is that the period involved in the present case is just precisely a period during which there have been great changes in value. Much of the depreciable property of the company involved in the present calculation was acquired prior to the year 1914, at pre-war cost levels. Its value, as determined in the valuation case, as of January 1, 1924, based on post-war price levels, differs so materially from pre-war costs that the use of the accounting or cost system as the rate base for depreciation reserve is, in the opinion of this Court, unreasonable and unlawful.

(2) *The amount allowed for depreciation reserve should be based, so far as it possibly can be, upon objective evidence.*

Havre de Grace Bridge Co. vs. Public Service Commission, 132 Md. 16-32-33; Pacific Gas Company vs. San Francisco, 265 U. S. 403-405-406.

"The testimony of competent valuation engineers who examined the property and made estimates in respect to its condition is to be preferred to mere calculations based on averages and assumed probabilities."

McCardle vs. Indianapolis Company, 272 U. S. 400-417.

The Commission allowed for depreciation reserve the annual sum of $883,544. *This is obtained by taking* 5 *per cent. of assumed gross returns under the rates of fare allowed by it.*

(1) Although this measurement of depreciation reserve by a percentage upon gross returns is a usual accounting practice, it is hard to justify it upon any principle of logic. To this Court, it seems almost totally irrelevant. The Commission recognizes this irrelevance; but justifies its method upon the ground that the result seems to work out "fairly well." *See opinion of Commission, pages* 26-27.

(2) It was conceded during the argument by Company's counsel that if the result did work out "fairly well" then the irrelevancy of the method employed by the Commission in arriving at its result would be no sufficient reason for judicial review of its act—and this concession was made in the face of the language used by the Court of Appeals at the conclusion of its recent opinion in the case of *Electric Public Utilities Co. vs. West et al.*, filed February 15th, 1928, and reported in The Daily Record of February 18th, 1928. However, the Commission did more than announce a result founded upon an irrelevant method of calculation. It tested that result by an analysis of the testimony in the case. "Depreciation" is discussed in the opinion of the Commission upon pages 22 to 30, inclusive. That discussion reveals fully the reasons which lead this Court to conclude that the amount fixed by the Commission for de-

preciation reserve was unlawfully fixed and probably was an unreasonably low amount. The opinion of the Commission shows the use by it of the following improper methods:

(a) It based depreciation reserve upon cost rather than present value. For the reasons stated above in discussion of Question II, paragraph A, 1, the Court disapproves that basis.

(b) It assumed a fixed relationship between the per cent. condition of Company's property and past depreciation, and from this assumption proceeded to determine rate of depreciation. This assumption is fallacious because the per cent. condition takes no account of obsolescence, either ordinary or extraordinary. Certainly proper depreciation reserve should make provision for ordinary obsolescence.

(c) It threw out and practically disregarded the only evidence of competent valuation engineers who examined the property and made estimates of its condition, and based its conclusions instead upon mere calculations based on averages and assumed possibilities. In this the Commission reversed the procedure approved by the Supreme Court of the United States and adverted to above in this opinion, under Question II, paragraph A, 2.

C.

The Court's Conclusions Regarding Depreciation Reserve.

Upon this question further consideration by the Commission is plainly necessary. What may be called the real evidence, or the affirmative evidence, upon the question, pionts strongly to the conclusion that the Commission's allowance of $883,544 is inadequate. But in the present state of the record, the Court cannot conclude whether the Company's claim of $2,200,000 is reasonable or is excessive. It is clear that the Commission, in testing its reasonableness, has used a false measuring rod, has made a fallacious assumption of relationship between per cent. condition and depreciation, and has substituted theoretical calculations and assumed probabilities for affirmative evidence not contradicted in the record.

Probably, however, evidence is available which was not brought forward at the original hearing which may justify the Commission in rejecting or in modifying the Company's claim for depreciation reserve. At all events, the Commission should investigate this matter thoroughly and make a new computation. Its own engineers should examine the property physically and should testify as to the physical condition, plus the ordinary obsolescence, plus the "life expectancy" of the several classes of depreciable property in such "life expectancy" what they consider a reasonable allowance for accruing ordinary obsolescence. Upon such testimony, along with the like testimony of Company's engineers, the Commission should make a new computation which should be made so as to show the Court that these legal standards have been used in the making of it. When the Commission shall have done this, and, in its usual fair and clear manner shall show that it has done so, its findings will become one of those quasi-judicial "legislative" acts performed by an administrative body to which the Court will give the weight assigned to it by the Court of Appeals in *West vs. Byron,* 138 *Atlantic* 404-410.

QUESTION I.

Is the Return of 6.26 *Per Cent. Allowed by Commission Unlawful?*

A

The Commission has fixed 6.26 *per cent. as neither unreasonable nor confiscatory. The Company contends generally for* 8 *per cent., but bases its specific claim on a calculation showing approximately* 7½ *per cent. See Company's Exhibit No.* 24, *opinion of Commission, page* 18.

The authorities show a strong judicial drift towards regarding 8 per cent. as a fair rate of return for regulated public service industries. The Commission disregards this judicial drift on two grounds, viz.:

(1) That the risk of return is greater in the case of an urban street railway company than in those public utilities as to which the Courts have approved an 8 per cent.

rate of return; and that therefore a lower rate of return should be granted to an urban street railway company. This is a ground of distinction which may be said to be founded upon a principle—whether a true principle or a false principle will appear below.

(2) That the urban street railway industry as a whole is not and has not been earning an 8 per cent. return. This is a ground of distinction founded not so much upon the assertion of a principle as upon an observation of facts and an assumption of causal relationships respecting them.

B.

The Court's Opinion On the Commission's Determination That 6.26 Per Cent. Is a Fair Rate of Return.

(1) Whether sought to be justified either on the ground just stated in sub-paragraph 1 or in sub-paragraph 2 above, the Commission's determination is subject to an identical infirmity, viz., its assumption that urban street railway properties are in a category by themselves. The Court's opinion is that the true basis of a category is not the specific service rendered,—which might result in one rule for gas companies, another for electric companies, another for water companies, another for a combination of the above, and still another for street railway companies,—but is that within the category there shall be included all regulated public service corporations performing a necessary service, and subject to similar business risks.

The best illustration of the impropriety of the Commission's theory, which groups urban street railway properties by themselves, is the practice followed by the Supreme Court of the United States in its consideration of a water company case, viz.: McCardle vs. Indianapolis Water Company, 272 U. S. 400-419. Passing upon the constitutional rate of return for a water company, the Supreme Court cited the decisions in ten cases, of which four dealt with gas companies, one with a natural gas company, one with a street railway, three with telephone companies and only one with a water company.

The Commission has not arbitrarily ignored the above

theory of classification which this Court suggests; but it cites no authorities for departing from it. This is somewhat strange; even more strange is the Commission's suggestion that this regulated public industry should be placed in a class with jobbers of merchandise. Se Commission's opinion, page 21. Although the Commission cites no authorities, its decision plainly proceeds from its acceptance of the principle expressed in that group of cases of which Covington & Lexington Turnpike Road Company vs. Sanford, 164 U. S. 578, decided in 1896, may be regarded as the prototype. That is to say, the Commission assumes that in the case of an urban street railway company it is dealing with a moribund industry of questionable public necessity; and that in the case of such an industry the value of its service to the public must be given a controlling force in the equation which will determine fair rate of return. Unquestionably, the Covington case and those like it, cited by counsel for the Commission on their brief, are authorities for this proposition not only in respect of moribund industries but also in respect of industries which are as yet undeveloped.

Does the urban street railway industry fall within this classification,—is it a moribund industry? This Court thinks not, for the following reasons:

(a) Though the Commission has fixed a rate based on this principle, it has by its findings of fact, expressly negatived its own major promise. The opinion of the Commission under the head "Railway Service a Necessity," pages 7, 8 and 9, is as strong a statement on this question as the Court can conceive.

(b) The evidence shows that the facts sustain the opinion of the Commission that the industry is necessary, and do not sustain its action, which rests upon a contrary assumption. See testimony of C. D. Emmons, Record, page 3282. This evidence, which is not disputed, shows that at the hours of peak load, the Company carries more passengers now than it ever did. Hence it is obvious that the competition of the private automobile, of which so much has been said in the briefs and in argument, has *modified* the need for public trans-

portation in Baltimore, but has not shown a tendency to supplant it. This modification results in an increased cost of service. Necessity of service is as great as it ever was.

(c) The legal principle inherent in the action of the Commission has never been announced in the case of an urban street railway company. The Covington case, supra, dealt with a turnpike road. Counsel for Commission cite in their brief a number of cases adopting the same principle in dealing with interurban electric railways, and one case from the Supreme Court dealing with a small logging railroad. These industries differ in kind from all other forms of regulated public industry, including urban street railways. They really are *moribund* industries,—many of them have died without resultant loss to the community formerly served by them. The cases cited should be read, therefore, not as statements of abstract law but with reference to their subject matter.

(2) We shall now examine separately the validity of the grounds of distinction relied on by the Commission.

(a) With respect of the Commission's proposition that since the risk of the business is greater in urban street railway cases than in the case of other utilities, their rate of return should be less, it is obvious that the Commission has reached an inverted conclusion, unless the term "risk of business" is used, and properly used by it, in the sense of describing an undeveloped industry or a business demonstrably moribund and visibly doomed to extinction. The urban street railway business is not *now* so visibly doomed. It may become so, or it may not. But present rate regulation should not proceed upon the prediction that it will. Unreasonably low or confiscatory rates so based certainly would tend to produce consequences which might justify the prediction.

(b) The proposition that the street railway industry is not and has not been earning more than 6.26 per cent., and that hence an allowance of that amount is fair, is by far the most persuasive statement, in a poular sense, which appears in the opinion of the Commission. The Commission elaborates that statement, by saying not

only that it *is* so but by suggesting as the reason for its being so that the urban street railway utilities themselves have admitted its inevitableness by not attempting to get rates of fare high enough to prevent its being so. From this the Commission continues, first, that probably the "traffic will not bear" such rates,—that the "economic limit" of fares has been reached and that present rates are "economic rates" as defined in Re Fishkill Electric Railway Company (N. Y. P. S. C., 2nd Dist.), P. U. R. 1919 D, 1, at page 7 (see Note below); and, secondly, by implication, that the failure of such utilities "to appeal for their rights in court" over a period of years disentitles them now to do so. The Court accepts neither of these propositions. As to the former, the Court's position will be made clear below under Paragraph C, 3 of this section of this opinion; as to the latter, it is sufficient to cite Bluefield Company vs. Public Service Commission, 262 U. S. 679, 694-695.

C

What Principles Should Govern in Fixing Rate of Return and What Rate of Return Should Be Allowed?

While no precise formula has been announced by the courts, and no rate of return applicable equally to all public utility companies can be determined, because each case must rest upon its own circumstances, nevertheless, we return to the general principle announced by the Supreme Court in Smyth vs. Ames, supra, that the rate of return must be fair both to the Company and to the public.

NOTE: "A requested increase may apparently be justified because of a lack of reasonable return; and yet the increase asked might, if granted, actually result in a decreased, instead of an increased, revenue. Where a deficiency in revenue must be met, the real problem is to find and fix the rates that will permit the most people to ride and still be high enough to cover costs. These rates may well be called the economic rates. Lesser rates spell bankruptcy; higher rates mean reduced operating revenue and a similar result. When these rates are finally found, they measure the economic demand for trolley service in that community. If the service is more extensive or more expensive than such demand requires, then the system to become and remain solvent must scale sufficient assets or abandon enough of its tracks, or both, to reduce the outgo. The income has reached its limit at that point." Re Fishkill Electric Company (N. Y. P. S. C., 2nd Dist.), P. U. R. 1919 D, I, at page 7.

Probably the most significant development of the law in this regard since Smyth vs. Ames, supra, is that the determination of what is fair to the utility company has been decided to rest upon the percentage of return upon the "value of its property used or useful in the public service" quite regardless of the financial structure of the utility company, and equally uncontrolled by the original cost of said property. This development of the law has been gradual; and it is conceivable that the present statement of it may not be final. The decisions of the Supreme Court, upon which this legal proposition is now so firmly founded, are punctuated by vigorous and persuasive dissenting opinions proceeding from the pen of Mr. Justice Brandeis, upholding the conflicting doctrine that rate of return should be calculated upon "prudent investment cost." However, whatever may be the future development of the law, it is well settled, at this time, that rate of return must be calculated upon present value.

1. *What is a "fair" rate of return from the point of view of the regulated company?*

In order that the return may be "fair to the Company" it must cover the "cost" of service,—"cost" meaning expenses of operation plus a fair return on the investment. Moreover, a "fair return on the investment" must be such a return as that from which it might reasonably be expected that money will be invested in the enterprise. In the light of the recent authorities, it is thought that this statement is axiomatic. The only exception to its applicability is in the case of those utility companies whose service cannot be said to be necessary. We have seen above that the United Railways & Electric Company of Baltimore does not fall within this category.

The propositions of law in this subsection of this opinion are so well settled that it is deemed unnecessary to analyze the authorities upon which they rest. Some of the principal cases are:

Wilcox vs. Consolidated Gas Company, 212 U. S. 19; Des Moines Gas Company vs. Des Moines, 238 U. S. 153; Lincoln Gas Company vs. Lincoln, 250 U. S. 256; Bluefield Company vs. Public Service Comm., 262 U. S. 679; Gal-

veston Electric Co. vs. Galveston, 258 U. S. 388; New York Telephone Co. vs. Prendergast, 300 Fed. 822; McCardle vs. Indianapolis Water Co., 272 U. S. 400; Alton Walter Co. vs. Illinois Commerce Comm., 279 Fed. 873.

2. The cases above cited, and many others, might be regarded as abundant authority for the proposition that a public utility such as the company in this case is subjected to daily confiscation of its property and that the continuation of rates of fare producing a return of less than 8 per cent. on the value of its property amounts to the taking of such property without due process of law in contravention of the 14th Amendment of the Federal Constitution. It is both interesting and significant that in the opinion just handed down by the Federal Statutory Court for the Southern District of New York in the case of Interborough Rapid Transit vs. The Transit Commission while thousands of words are devoted to the consideration of other questions involved in that case, the Court assumes as beyond the sphere of argument that the company is entitled to an 8 per cent. return on the present value of its property, and cites only four cases in support of such assumption, viz:

McCardle vs. Indianapolis Water Company, 272 U. S. 419; Bluefield vs. Public Service Commission, 262 U. S. 679; Galveston Electric Company vs. Galveston, 258 U. S. 388; Brooklyn Union Gas Company vs. Prendergast, 272 U. S. 580.

Many additional cases sustaining the same proposition have been cited on company's brief. This Court might well conclude that it is established by the authorities that a return of 8 per cent. on present value is the minimum limit for the avoidance of confiscation. For the purpose of the present case, however, it is not necessary to go quite so far. It must be assumed that Company has, in this case, stated its position with full regard for what it conceives its right to be. Company's Exhibit No. 24 analyzes what company claims to be the result of a grant of the right to charge a flat ten-cent fare. This exhibit shows that said fare would yield a return of 7.44 per cent.; and company expresses its satisfaction with that rate of return.

It has been well said that no two rate cases are precisely alike. It is also true that prevailing interest rates on bonds, at least, have fallen since many of the cases approving an 8 per cent. return on value were decided. While it is obvious that the price at which money can be obtained as an investment in bonds has no direct relationship with the rate of return upon rate base to which a utility is entitled, nevertheless falling interest rates do bear some relationship to the question of the rate return which a company must earn in order that it may attract capital for investment. It is reasonable to assume that a recognition of this relationship by company plays some part in its expressed opinion that a return of 7.44 per cent. would not be confiscatory.

It is also suggested that the test in a State Court is not merely confiscation but also reasonableness. The Maryland Court of Appeals has recognized this in Pennsylvania Railroad Company vs. Public Service Commission, 126 Md. 59, 76-77. It is conceded that the margin of difference between a confiscatory rate and a rate unreasonably low is not great. Viewing this case in the light of its own circumstances, and giving due weight to Company's Exhibit No. 24, this Court is of the opinion that a rate of fare which would produce a rate of return not exceeding 8 per cent. on value would not be unreasonably high; but that any rate of fare producing a rate of return lower than 7½ per cent. on value certainly is both unreasonably low and confiscatory.

3. *What is a "fair" rate of fare from the point of view of the public?*

Reverting once more to the fundamental principles announced in Smyth vs. Ames, supra, the public is entitled to demand that rates shall not call upon it to pay more than the services rendered are reasonably worth. A fair rate must be fair to the utility and fair to the public. How can the question of fairness to the public be tested?

(a) Manifestly it must be within the "economic limit." Testimony of Professor Jacob H. Hollander, pages 3160 et seq., is regarded by the Court as most persuasive upon the proposition that this "economic limit" would not be exceeded even by the rate of fare sought by the company.

At this point, it might be well to add that the Commission, in its finding that the increase of rates of fare from 7½ to 8⅓ cents may be expected to cause a falling off of only 2 per cent. in patronage, with a substantially large resultant increase of net return, reinforces the opinion of this Court that the "economic limit" of fares is not even being approached. Also, it is reasonable to assume that the enlightened self-interest of the company would prevent it from attempting to secure fares in excess of such "economic limit."

Against this assumption, the Commission in its opinion calls attention to the fact that urban street railway companies generally have not attempted to charge fares as high as those which the company seeks to charge. From this circumstance, the Commission concludes that the management of said companies has been motivated by a recognition of the fact that fares of such magnitude would be subjected to the economic law of diminishing returns. Obviously, that is merely a speculative assumption on the part of the Commission, which has no way of knowing such motives. This Court hesitates to indulge any similar speculative assumptions. Yet it may well be that the reluctance of urban street railway management to push its demands towards or up to the point at which returns would be adequate, as defined in respect of other public utilities, may proceed from the traditional force of the concept of a five-cent fare as being synonymous in the public mind with "carfare" in a quisa generic sense. This is a simple concept, much more readily grasped than anything analogous to it in connection with telephone rates, gas rates, and the like; and it causes public resentment against each successive increment of increased carfare in a thoroughly illogical manner. Thus, when fares are raised from 7½ to 8⅓ cents, a large section of the public immediately compares the new fare not to the old one which preceded it, but to the fondly remembered five-cent fare of its youth, and complains bitterly about an increase of 3⅓ cents. A recognition by urban street railway management of the force inherent in such a widely held popular concept may explain sufficiently the slowness of urban street railway management in asserting its rights in Court, both in this jurisdiction and elsewhere; for management, if wise, is slow

to do anything which may disturb its relations with the public.

The aforegoing speculation, on the part of this Court, avowedly is speculation. It is stated, however, merely to emphasize the Court's view that the assumption of the Commission as to recognition by street railway management of its "economic limits" and "point of diminishing returns" is equally speculative. Against both speculations, the Court cites again the testimony of Professor Hollander above referred to, as well as the experience of the Boston street railway system under a ten-cent fare.

(b) A rate of fare to be fair to the public must represent the fair value of the service rendered. "Value," as here used, has little to do with cost. It is subjective with the fare-paying public. It is a concept compounded of economic law and of psychology. Admittedly, it is extremely difficult to define. In the oral argument of the related cases of the People's Corporation vs. Public Service Commission and the State Committee of the Socialist Party of Maryland vs. Public Service Commission, the Court heard vigorous and able statements bearing upon this phase of the case. The Court does not wish to seem to disregard these statements. Not only do they possess a stirring human quality, but they are entitled to serious consideration as a matter of law. A Court which would be deaf to the assertion that a proposed rate of fare would compel a substantial portion of the public to walk to and from its work, a Court which would shut its ears to a plea that working men and women ought not to have an additional dollar taken from their meagre weekly earnings in order that holders of corporate securities may wax richer, would not only be lacking in essential humanity, but would be closing its ear to the fundamental rule of law announced in Smyth vs. Amos, supra, and so often heretofore adverted to, that rates must be "fair to the public."

But a proper regard for this fundamental principle is to be determined neither by rhetoric nor by sentiment. In the first place, the extreme difference of 2½ cents between a 7½-cent fare and a ten-cent fare amounts to only thirty cents for six round trips per week. In the

next place, while it probably is true that many individuals in a city like Baltimore are living so close to their own "economic limits" that a difference of only a few cents a week may impose actual hardship upon them, that fact cannot exercise a controlling influence; and the Court must subordinate it to the principles of law which are binding in the decision of the question.

It has been said that the question under consideration is subjective with the public and that the answer to it depends partly upon psychology. But it can be approached, and the Court thinks it should be approached, obectively. A dollar today is not the same thing as a dollar in 1913. Its purchasing power is less; and dollars are not distributed through the community in 1928 precisely as they were distributed in 1913.

The Court thinks it reasonable to begin with the assumption that a five-cent car fare in 1913 was "fair to the public." According to the testimony of *Professor Hollander, Record, page* 3057 *to page* 3170, the best available official sources of information show that the cost of living is now 173 per cent. of what it was in 1913. Commission's counsel (*Brief, page* 36), admit that this fact alone makes a fare of between eight and nine cents in 1928, the exact equivalent of a fare of five cents in 1913. Of course that would not be so unless the people who have to pay the fare are earning $1.73 in 1928, as against $1 that they were earning in 1913. Are they doing so?

The same statistical data produced by Professor Hollander answer this question by showing that, on the average, work for which wage-earners were paid $1 in 1913, now yields them $2.20. This Court confesses its hesitancy to accept at par any economic conclusion based upon statistical analysis. All statistical data are very pliable. Nevertheless, the figures quoted are from the best sources available and they are not contradicted by anything in this record. Objectively, they seem to show that the increased fares herein under consideration will be "fair to the public" in the sense that, tested by the real purchasing power of the wage-earning public, they will cost that public no more than did the admittedly fair five-cent car fare of pre-war days. This seems to the

Court to be full and substantial compliance with the salutary rule of law announced in *Smyth vs. Ames.* Furthermore, the Court observes the following in the opinion of the Commission as bearing upon this same question of value of service, viz:

> "In fact, taking all things into consideration, including the cost of giving the service, the extension of lines and fare zones, the greater transfer privileges, the auxiliary bus lines and the like, the Commission believes that street car riders as a whole today receive relatively much more for the fare they pay than they ever received for a five-cent fare." —*Opinion of Commission, page* 9.

4. Finally, on this branch of the case, it is urged by Commission's counsel that the Court should not interfere by injunction until a test of the effect of the rate under actual operation has been made. A number of authorities are cited in support of this proposition, notably *Pa. Railroad Company vs. Public Service Commission,* 126 Md. 59, 80.

An examination of these cases demonstrates that the principle invoked has no proper application in the instant case. That principle applies where the evidence is conflicting or uncertain as to the probable remunerative effect of a new tariff. As quoted by the Maryland Court of Appeals, "It can soon be settled which is right, the railroad company's officers or the railroad commission, in their view of the effect of the Commission's tariff of rates by allowing the tariff to go into operation." But in the instant case, both the Commission and the Company agree that the rate ordered by the Commission will yield a maximum return of 6.26 per cent. In the Court's view, such return is unreasonably low and confiscatory. Therefore nothing would be gained by permitting its operation over a trial period.

QUESTION III.

Was the Action of the Commission in Fixing the Present Value of Company's Property to be $75,000,000 *Unlawful?*

Without extending this already too long opinion, it is sufficient to say that the Court has considered carefully

the Company's contentions in this regard and finds that the Commission, in this portion of its action, exercised fairly its "legislative" or administrative discretion. At the most, it might be said that the Commission made a mistaken application of right standards. But it did not, as in its action in fixing depreciation reserve, use erroneous and illegal standards. Error of this kind, if there be error, is not subject to judicial review.

QUESTION IV.

Was the Order of the Commission in Abolishing the Second Fare to Halethorpe Unlawful?

What has been said in the last preceding section of this opinion applies with even greater force to this question. In fact, the Court fully agrees with the Commission's conclusion upon this question. Of course, the estimated loss of $40,000 of annual revenue resulting therefrom, is a factor to be taken into consideration in the ultimate determination of a fair rate of return.

CONCLUSIONS.

From what has been said it follows that this case must be remanded to the Commission for the taking of additional testimony on the question of depreciation reserve.

Should the Commission, after fixing finally what it conceives to be a proper legal allowance for depreciation reserve, make a final order fixing rates of fare upon a basis which will yield a rate of return upon the rate base of $75,000,000 of not less than 7½ per cent. and not more than 8 per cent., such rates of fare, so fixed, will be permitted to stand. If, however, the Commission shall adhere to its ruling that a fair rate of return is less than 7½ per cent., and shall by its order establish rates of fare in accordance with that ruling, then the Court will be required, in accordance with this opinion, to issue its injunction. Whether such injunction shall issue, as well as the terms and conditions which may be annexed to it, are questions which cannot be decided until the Commission shall have taken further action.

The case is hereby remanded to the Commission; and an appropriate order, to that effect, will be signed.

(5)

DECREE.

(Filed May 11, 1928.)

In the Circuit Court No. 2 of Baltimore City.

The United Railways and Electric Company of Baltimore

vs.

Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, Constituting the Public Service Commission of Maryland.

This cause having been set down for hearing and coming on to be heard on the pleadings and the transcript of papers and proceedings, including evidence, in the case before the Public Service Commission, and having been argued by counsel for the parties, and the Court being of the opinion, for the reasons stated in its opinion filed in this cause, that the rates fixed by the Order No. 12639 of the Public Service Commission passed on February 10, 1928, and said Order and prior orders limiting rates charged by the plaintiff, are unconstitutional, unlawful and unreasonable and fail to allow to the plaintiff a fair return on the fair value of its property; and the defendants, constituting the Public Service Commission of Maryland, having elected not to have this cause remanded to them for further proceedings upon the lines suggested in the Court's opinion, but to have a final decree or order entered forthwith,

It is thereupon this 11th day of May, nineteen hundred and twenty-eight, by the Circuit Court Number Two of Baltimore City, adjudged, ordered and decreed that said Order No. 12639 of the Public Service Commission of Maryland be and the same is hereby vacated and set aside in so far as the same purports to limit the rates of the plaintiff; except, however, as to that portion of

said order which extended the first fare zone on the Halethorpe line to the terminus of said line at Halethorpe, as to which latter provision in said Order the bill of the plaintiff is hereby dismissed.

And it is further adjudged, ordered and decreed that the defendants and their successors in office be and they are hereby perpetually enjoined and prohibited against enforcing against the plaintiff the provisions of said Order No. 12639 in so far as the same limit or purport to limit the rates of fare to be charged by the plaintiff and also against enforcing against the plaintiff the provisions of any prior orders of the Commission limiting or purporting to limit the rates of fare to be charged by the plaintiff.

And it is further ordered that the costs in this cause be paid by the defendants.

JOSEPH N. ULMAN.

(6-A)

ORDER FOR APPEAL.

(Filed May 11, 1928.)

In the Circuit Court No. 2 of Baltimore City.

The United Railways and Electric Company of Baltimore

vs.

Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, Constituting the Public Service Commission of Maryland.

ORDER FOR APPEAL.

Mr. Clerk:

Please enter an appeal to the Court of Appeals of Maryland on behalf of the defendants, from the decree entered by the Court in the above entitled case on the eleventh day of May, nineteen hundred and twenty-eight.

THOMAS J. TINGLEY,

RAYMOND S. WILLIAMS,

Special Counsel to the Defendants Constituting the Public Service Commission of Maryland.

State of Maryland, City of Baltimore, to wit:

I hereby certify that on this 11th day of May, nineteen hundred and twenty-eight, before me the subscriber, a Notary Public in and for the State and City aforesaid, personally appeared Harold E. West, Chairman of the Public Service Commission of Maryland, and made oath in due form of law that the appeal in the above entitled case is not taken for purposes of delay.

EVELYN M. WYNIGER,

(Seal.) Notary Public.

My Commission expires May 6, 1929.

(6-B)

ORDER FOR CROSS-APPEAL ON HALETHORPE.

(Filed May 23, 1928.)

In the Circuit Court No. 2 of Baltimore City.

The United Railways and Electric Company of Baltimore

vs.

Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, Constituting the Public Service Commission of Maryland.

Mr. Clerk:

Please enter an appeal on the part of the plaintiff to the Court of Appeals from that part of the decree which dismissed the bill as to that portion of the order of the Public Service Commission which extended the first fare zone on the Halethorpe line to the terminus of said line at Halethorpe.

(Sgd.) HENRY H. WATERS,

(Sgd.) HAMAN, COOK, CHESNUT & MARKELL,

(Sgd.) VENABLE, BAETJER & HOWARD,

(Sgd.) JOSEPH C. FRANCE,

Solicitors for The United Railways and Electric Company of Baltimore,

Plaintiff.

(7)

APPLICATION OF THE UNITED RAILWAYS & ELECTRIC CO. IN CASE NO. 2648, BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND.

Before the Public Service Commission of Maryland.

In the Matter of the Application of The United Railways & Electric Company of Baltimore for a Modification of Certain Orders now in Force Fixing Its Rates of Fare; and for a Change in Its Rates and Fares.

To the Honorable, the Public Service Commission of Mayland:

The United Railways and Electric Company of Baltimore, the petitioner in the above entitled case, respectfully shows unto your Honorable Commission:

(a) That (as is well known to your Honorable Commission and its records will show), you petitioner has been endeavoring for years past, through economies and savings in its operations to keep down the cost of its service to the car riders of Baltimore, and this has been done, notwithstanding (1) that the net fare received by the Company after deducting the Park Tax, is below the net fare of all privately operated street railway companies in cities the size of Baltimore, or larger, with the exception of New York, in which City, it is common knowledge, the tax-payers make up large shortages in Revenues; (2) the present rate of fare is inadequate to give a fair return on the value of your petitioner's propeties devoted to the public service, and (3) that the Net Income of your petitioner has constantly fallen short of the amount estimated by the Commission as necessary for good credit and satisfactory service to the public.

Some of the expedients, which your petitioner has adopted for the purpose of effecting such economies,

have not been popular, and have been resorted to in the expectation that the total economies effected would be sufficient to avoid the necessity for any further increase in car fare.

These efforts of your petitioner have extended over several years, and without any fault on the part of your petitioner, these expectations have not been realized.

Apart from the mounting tendency of operating costs, as hereinafter shown, is the fact that, since January of the present year, the tide has set definitely against your petitioner. Gross Receipts (Passenger Revenue) for the last three months, when compared with the same three months of 1926, have fallen short approximately $167,000, or at the rate of over $660,000 a year, which represents more than one-half of the Net Surplus Earnings of the Company for the year 1926, after the payment of Operating Expenses, Taxes and Interest on Indebtedness. At the same time, taxes, wages and other items included in the cost of operation have increased, so that your petitioner is now confronted with an emergency which requires immediate relief, if it is to continue to perform its public service, maintain its credit and secure necessary money to provide new cars and other equipment.

That the increases of fare heretofore authorized by your Honorable Commission have not proportionately added to the Company's revenues, appears from the recent Opinion filed in the Valuation case, as follows:

> "In addition to the higher costs of operation which went to absorb the increased revenue resulting from the successively increase rate of fare, the Commission from time to time extended the fare zones on the suburban lines of the Railways Company until finally by its Order No. 8240 entered in Case No. 1682 on May 26, 1924, it extended the city fare to the city limits on all lines where it had not theretofore been extended to the city line and made other zone extensions on the county lines, and also provided for the sale of school tickets at the rate of fare of five cents per trip. All these changes reduced materially the revenue which the Railways

Company otherwise would have obtained from the higher rates of fare."

Your petitioner believes that a ten-cent fare is necessary to enable it to serve the public adequately and obtain funds necessary for the coming years to keep pace with the growing needs of the City, and obtain a Fair Return on the fair value of its properties. Your Honorable Commission, however, will doubtless desire to give full consideration to all relevant facts and figures (including the Valuation, not yet finally arrived at, in the pending Valuation proceeding), before establishing new permanent rates of fare.

Nevertheless, your petitioner's position is one demanding prompt and immediate relief. Your petitioner, therefore, now files this petition asking your Honorable Commission to establish a flat fare of ten cents cash for the conveyance of each passenger over twelve years of age, with half-fares at five cents each for children between the ages of four and twelve years, school tickets at five cents each, and commutation tickets at special rates." Your petitioner also asks your Honorable Commission to put into effect at once substantially increased fares in order that pending such establishment of such permanent rates of fare, your petitioner may be able to provide adequate service and meet its obligations.

The long period of years, during which your petitioner's revenues have been grossly inadequate, has so strained its resources that it cannot now further delay asking relief for even the few months which should suffice for a final decision in the pending Valuation case, and, also (in view of the full showing of facts already made in that and prior cases by your petitioner), for the establishing of new permanent rates on this present application.

On the other hand, the fact already established in the Valuation case and in prior cases demonstrate that, pending a final decision herein, substantially increased temporary fares can be put into effect immediately without prejudice to the public interest, and without yielding to your petitioner a Fair Return on the fair value of its properties.

On the basis of Valuation of $77,000,000, as of December 31, 1923, viz: $70,000,000, plus the valuation of easements by the only members of your Honorable Commission who have yet passed on the amount of that Valuation,—or even on the basic value of $70,000,000, exclusive of easements, also exclusive of Net Additions to Capital since December 31, 1923, a flat ten-cent fare, if immediately put into effect, would yield your petitioner for the calendar year of 1927 less than a reasonable return on either valuation mentioned.

(b) That Order No. 8240, as entered by your Honorable Commission in Case No. 1682, on May 26, 1924, fixed the present base rate of fare of seven and one-half cents, when tickets or fare tokens are purchased, or eight cents cash; with four-cent fare for children between the ages of four and twelve years, and school tickets at the rate of five cents for school children and commutation tickets at special rates, and that said fares were continued and are in effect by virtue of Order No. 10072, entered by your Honorable Commission on March 9, 1926, in Case No. 533, which continues the present fare until midnight of April 30, 1928, unless earlier modified by further Order of your Honorable Body.

(c) In the Opinion filed with Order No. 8240, your Honorable Commission estimated the Gross Income of the Company would, by the fares then fixed, be increased by $1,168,212; that from this sum must be taken $588,631 for zone extensions, readjustments and school fares, and $373,705 for increased labor costs, taxes and fixed charges, thereby leaving your petitioner "but $205,876 of the increased fare"; that such increase would bring the Net Income of your petitioner for 1924 to $1,182,142, and make "the Gross Income of the Company approximately one and one-third times its Fixed Charges."

The actual Net Income, however, that your petitioner was able to earn for the year 1924 under the fares fixed by said Order No. 8240 was but $967,968, or $214,174 less than anticipated by your Honorable Commission. Nor has your petitioner been able in either the year 1925 or 1926 to bring its Net Income to the estimate of your Honorable Commission for the year 1924.

The Net Income of your petitioner for the year 1925

was $980,610 or $201,532 less than said estimate, and its Net Income for the year 1926, though somewhat larger than the preceding year, due to economies in operation, was still only $1,010,054, or $172,088 less than said estimate. Moreover, no further economies can reasonably be effected by your petitioner to increase materially its Net revenues without large Capital outlays, requiring first the strengthening of your petitioner's credit position. On the basis of actual results for the first six months of the present year and probable results for the last six months, the Net Income of your petitioner will be approximately $447,894, or $734,248 less than said estimate.

(d) That your Honorable Commission has stated in Opinions filed after investigations into the rates charged by your petitioner that, when provision for Operating Expenses, Taxes and reasonable allowances for Accidents and Depreciation Reserves have been made and all Fixed Charges met, it would be reasonable and in the best interests of the public for your petitioner, by sensible economies and good service, to earn a Net Balance to Surplus, or Net Income, of $1,500,000, and that said Net Balance to Surplus should not be allowed to fall below $1,000,000, if the credit position of your petitioner is to be maintained. Moreover, your Honorable Commission has declared as a working principle that, pending the valuation of your petitioner's properties, the Gross Income of your petitioner should be equal to from one and one-third to one and one-half times its Fixed Charges.

(e) That your petitioner has prepared and filed regularly with your Honorable Commission sworn statements showing the Gross Income, Fixed Charges and Net Income of your petitioner during the year 1920 to 1926, inclusive, and that said statements disclose the fact that your petitioner, although striving with diligence and practicing economies and efficiencies in operation, has been unable during the period stated to reach the said minimum Net Income of $1,000,000 per annum by the aggregate Net amount of $587,003 for said entire period of seven years, and has fallen short of the reasonable Net Income of $1,500,000 per annum by the total amount of $4,087,003 for said seven years; that during said pe-

riod, the Net Income of your petitioner, when measured on the basis of a Gross Income of one and one-third times Fixed Charges, has fallen short of the required amount by $1,297,854, and when measured on the basis of a Gross Income one and one-half times Fixed Charges has lacked $5,153,283 of the required amount.

(f) Your petitioner further shows that its Revenue Passengers for the year 1921 decreased 6.24% below those for the year 1920; that 1922 showed a similar decrease of 1.83% from 1921; that 1923 showed a gain of only 2.11% over 1922; 1924 a decrease of 4.29% from 1923; 1925 a decrease of 1.83% from 1924; 1926 a gain of less than one-half of one per cent over 1925; that 1926 shows a decrease of 11.29% from 1920, and that, while the month of January, 1927, showed a gain of thirty-two one-hundredths of one per cent over January, 1926, yet the months of February, March, April, May, June and July (July approximate) of 1927 show decreases of 1.61%; 2.51%; 1.39%; 3.93%; 3.24% and 4.21%, respectively, compared with corresponding months of 1926. The seven months period of January to July, inclusive (July approximate), for the year 1927, shows a decrease in Revenue Passengers of 3,116,027, or 2.37%, from the Revenue Passengers for the same months of 1926. These decreases your petitioner attributes, for the most part, to the ever-increasing use of automobiles, and the congestion caused by the parking of automobiles in the downtown section of the City, which necessarily slows up the street cars and makes the operation of the railway much more difficult and much more expensive as a means of rapid transportation. Moreover, while the number of Revenue Passengers carried by your petitioner is falling off, the steady drift of the population of Baltimore City has been, as is well known to your Honorable Commission, farther and farther away from the center of the City to the outlying districts, especially since the annexation of 1918, which, together with zone extensions ordered from time to time by your Honorable Commission, has increased to a marked degree the length of the average ride your petitioner is now called upon to furnish for a single fare, as compared with the average length of ride formerly furnished. A recent study made by your petitioner shows

that during the period 1915 to 1926, inclusive, the total passengers carried over long City lines have increased 50%, while the total passengers carried over short City lines have slightly decreased, and that during the period 1915 to 1926, inclusive, car miles over long City lines have increased approximately 50%, while car miles over short City lines have decreased approximately 9%.

The cost to your petitioner in the increased length of ride required to be given because of the 1924 zone extensions has been checked against the loss predicted at the 1924 Fare Hearing, and it is clear that the zone extensions (together with school fares), required by your Honorable Commission in 1924, are causing a loss in Gross Revenues of your petitioner of approximately $565,000 a year.

(g) That conditions of employment, growth of the use of the automobile, growth of suburban developments (resulting in longer rides for a single fare) and changes in the habits of the people as to the use of the street railway for various purposes have caused large decreases in earnings of your petitioner. While the month of January showed a slight increase for this year over January of last year, each succeeding month since January has shown a decrease in earnings. From January 1st to July 31st, of this year,—212 days—the Gross Earnings (Passenger Revenue) of your petitioner have fallen $253,490 below those for the same period of 1926, or over $1,195 a day, which on the same basis for the entire year would mean over $436,000, or over 43% of the Net Earnings for 1926 of your petitioner. During July of this year, the Gross Earnings of your petitioner have been $59,638 less than they were for the same month of the year 1926, or at the rate of $1,920 a day. If these losses continue at the same rate for the balance of this year, your petitioner will suffer a decrease of $547,000 in its Gross Earnings, or over 54% of its Net Earnings for the year 1926.

Some of this loss in Gross your petitioner has been able to absorb by economies in operation and by curtailment of schedules. Your petitioner has, however, maintained its high standard of service as long as possible and has not cut its schedules until after a serious falling off in its Revenue Passengers has compelled such action.

These large decreases in Gross your petitioner cannot continue to absorb through reduction of service schedules and still give adequate service, and your petitioner cannot but anticipate such a loss in Net as will materially reflect on its credit position.

(h) A study of comparative operating costs for the year 1926 of your petitioner and other street railway companies operating city lines shows that your petitioner, through various economies and efficiencies in operation, has reduced its total operating expenses per car mile to such an extent that it now leads the group as the lowest in cost per car mile; and on the basis of percent of operating revenue, its operating expenses are less than the average for 98 companies operating city lines exclusively. At the same time, the taxes of your petitioner were greater than those of any railway in the group and over 165% of the average for 98 companies operating city lines exclusively.

While the wages of the Platform and Shop Men of your petitioner have not been unreasonable, in view of the living conditions in the City of Baltimore, they are lower than those of the larger cities, especially the cities of the North. In fairness to its employes, and in recognition of their loyal co-operation, your petitioner granted an increase of one cent an hour, effective January 1, 1927, and an additional one cent an hour, effective January 1, 1928; and because of the fact that its neighboring city of Wilmington, Delaware, has as its maximum rate for car men 56c an hour, and the City of Washington a rate of 58c an hour, a promise was made to your petitioner's men that, if it were possible, your petitioner would voluntarily increase the rate of the car men to 55c, an increase of 3c an hour over the 1926 rate of 52c. Your petitioner, therefore, cannot hope to increase its Net Income by lowering the wages of its men.

A comparison of the earnings and expenses of your petitioner for the year 1923 and 1926 reveals the fact that Operating Expenses were held down to an increase of $168,402, largely by reducing Car Miles from 35,873,-841 to 35,304,583 and by cutting Maintenance Expenses by $186,363. While the service furnished by your peti-

tioner was cut 569,258 Car Miles between 1923 and 1926, increased efficiency in the use of equipment made possible an increase of more than 35,000,000 Seat Miles for the year 1926 over the year 1924 (Seat Miles for 1923 not being available).

It is therefore apparent that your petitioner is operating at high efficiency but has been forced to decrease its frequency of service, while it has actually increased service in seat mile capacity, in order to prevent losses in its Net Income.

(i) Your petitioner, therefore, for the reasons herein set forth, finds itself compelled to bring to an end the heavy losses now occurring, which it will be impossible for your petitioner ever to recover, and to that end to ask (1) that the increased fares hereinbefore mentioned be established as new permanent fares, and (2) that pending such establishment of such new permanent fares, substantially increased fares be immediately put in force as temporary emergency fares.

Your petitioner prays for relief accordingly.

Respectfully submitted,

THE UNITED RAILWAYS & ELECTRIC COMPANY OF BALTIMORE,

By CHARLES D. EMMONS, President.

JOSEPH C. FRANCE,

HENRY H. WATERS,

VENABLE, BAETJER & HOWARD,

HAMAN, COOK, CHESNUT & MARKELL,

Attorneys for Petitioner.

State of Maryland, Baltimore City, to wit:

On this 1st day of August, 1927, before me, a Notary Public of the State of Maryland, in and for Baltimore

City, personally appeared Charles D. Emmons, President of the United Railways & Electric Company of Baltimore, and made oath in due form of law that the matters and facts stated in the foregoing petition are true as therein set forth, to the best of his knowledge, information and belief.

Witness my hand and Notarial Seal.

W. FRANK REED,

(Seal.) Notary Public.

(8)

APPLICATION OF THE HALETHORPE COMMUNITY ASSOCIATION, ET AL., IN CASE NO. 2648, BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND.

Before the Public Service Commission of Maryland.

Case No. 2648.

In the Matter of the Application of the United Railway & Electric Company of Baltimore for the Establishment of a Permanent Rate of Fare of Ten Cents and for the Establishment of a Temporary Emergency Rate of Fare Pending the Establishment of Such Permanent Rate of Fare.

In re: Application of the United Railway & Electric Company of Baltimore for right to increase carfare rates in Baltimore City and Baltimore County.

To the Honorable Members of the Public Service Commission of Maryland:

The Halethorpe Community Association, The Arbutus Improvement Association, The Halethorpe Building & Loan Association, The Arbutus Building & Loan Association, The Benson-Link Realty Corporation, The Northwest Halethorpe Corporation, The Arbutus Land Company and the undersigned residents of Halethorpe, Arbutus and Leeds hereby respectfully protest against the granting of the increase prayed for in said application in so far as it applies to the No. 3 line of the United Railway & Electric Company extending from the center of the City to Halethorpe and respectfully petition your honorable body:

That they as corporations, partnerships, individuals and as representatives of the localities of Leeds, Arbutus and Halethorpe be relieved from the unjust and un-

reasonable two fares that now exist with reference to rates upon the Halethorpe or No. 3 line of the United Railway & Electric Company to and from the center of the City of Baltimore by granting to Halethorpe a one fare from the center of City. That the persons, corporations and localities now served by each of the eleven other lines extending to and into the suburbs of Baltimore now have an undue and unreasonable preference and advantage over the persons, corporations and localities of Leeds, Arbutus and Halethorpe, by reason of the two fares now charged to Halethorpe as compares to the one fare from the center of the City charged on said eleven other lines to the great prejudice and disadvantage of your petitioners and protestants and the localities of Leeds, Arbutus and Halethorpe.

That any increase in the fares of the Halethorpe or No. 3 line of the United Railway & Electric Company, unless it be upon a one fare basis and not a two fare basis, will double the unjust and unreasonable discrimination as to rates now imposed upon the persons, corporations and localities now served by the Halethorpe line No. 3 at Leeds, Arbutus and Halethorpe and also double the now existing undue and unreasonable preference and advantage of our competitors over the persons and corporations now residing and doing business along said No. 3 line between Halethorpe and the center of Baltimore and against said localities of Leeds, Arbutus and Halethorpe to the still greater disadvantage of your petitioners and protestants and said localities of Leeds, Arbutus and Halethorpe.

Your petitioners and protestants in justification for the above protest and petition for one fare respectfully show the following facts:

That there are twelve lines of the United Railway and Electric Company extending to or into the suburbs of Baltimore County, namely:

No. 3	Halethorpe line
No. 14	Ellicott City line
No. 23	Middle River line
No. 8	Catonsville line
No. 8	Towson line
No. 15	Overlea line
No. 35	Hillsdale line
No. 28	Lakeside line
No. 26	Sparrows Point line
No. 19	Hamilton line
No. 32	Woodlawn line
No. 5	Pikesville line

Set forth below are the first and second fare mileages with the excess of the various lines over the Halethorpe line and the per cent of excess of the various lines over the Halethorpe line and the average per cent over the Halethorpe line.

A. Mileages.

		MILEAGE.		
Line No.	Name.	First Fare from center of City.	Second Fare.	Total Two Fares.
3	Halethorpe	4⅜	1⅞	6¼
14	Ellicott City	5⅜	2⅝	8
23	Middle River	5⅜	2⅞	8¼
8	Catonsville	5⅝	2¼	7⅞
8	Towson	6½	2⅛	8⅝
15	Overlea	6⅞	——	——
35	Hillsdale	7⅛	——	——
28	Lakeside	7¼	——	——
26	Sparrows Point	7⅝	3¼	10⅞
19	Hamilton	7⅞	1⅜	9¼
32	Woodlawn	7⅝	——	——
5	Pikesville	8¼	3⅝	11⅞

B. Following is a comparison of one fare distances from the center of the City compared with Halethorpe line from center of City to Oaklee:

Line No.	Name.	One Fare Distances From Center of City Compared with Halethorpe Line. Excess Mileage.	% Excess.	Average % Excess.
				57%
3	Halethorpe	.....	.....	
14	Ellicott City	1	23%	
23	Middle River	1	23%	
8	Catonsville	1¼	29%	
8	Towson	2⅛	49%	
15	Overlea	2½	57%	
35	Hillsdale	2¾	63%	
28	Lakeside	2⅞	66%	
26	Sparrows Point	3¼	74%	
19	Hamilton	3½	80%	
32	Woodlawn	3¼	74%	
5	Pikesville	3⅞	89%	

C. Following is a comparison of second fare distances compared with the Halethorpe line second fare distances:

Line No.	Name.	Second Fare Distances Compared With Halethorpe Line Second Fare Distances. Excess Mileage.	% Excess.	Average % Excess.
				38%
3	Halethorpe	.....	.....	.....
14	Ellicott City	¾	40%	
23	Middle River	1	53%	
8	Catonsville	⅜	20%	
8	Towson	¼	13%	
15	Overlea	.....	.....	
35	Hillsdale	.....	.....	
28	Lakeside	.....	.....	
26	Sparrows Point	1⅜	73%	
19	Hamilton	Min. ½	Min. 27%	
32	Woodlawn	.....	.....	
5	Pikesville	1¾	93%	

D. The following is a comparison of total fare distances of two fare lines from center of city compared with the total Halethorpe line two fare distances, from center of city.

Line No.	Name.	Total Fare Distances of Two Fare Lines Compared With Total Halethorpe Line Two Fare Distances. Excess Mileage.	% Excess.	Average % Excess.
				48%
3	Halethorpe	.....	.....	.....
14	Ellicott City	1¾	27%	
23	Middle River	2	32%	
8	Catonsville	1⅝	26%	
8	Towson	2⅜	38%	
15	Overlea	.....	.....	
35	Hillsdale	.....	.....	
28	Lakeside	.....	.....	
26	Sparrows Point	4⅝	74%	
19	Hamilton	3	48%	
32	Woodlawn	.....	.....	
5	Pikesville	5⅝	90%	

E. The following is a comparison of the *one fare* distances from the center of the City *compared with* the Total Halethorpe Line *two fare* distances from the center of the City.

Line No.	Name.	One Fare Distances From Center of City Compared With Total Halethorpe Line Two Fare Distance. Mileage. Excess	Excess. %	Excess. Average % 10%
3	Halethorpe	———	———	———
14	Ellicott City	Min. 7/8	Min. 14%	
23	Middle River	Min. 7/8	Min. 14%	
8	Catonsville	Min. 5/8	Min. 10%	
8	Towson	1/4	4%	
15	Overlea	5/8	10%	
35	Hillsdale	7/8	14%	
28	Lakeside	1	16%	
26	Sparrows Point	1 3/8	22%	
19	Hamilton	1 5/8	26%	
32	Woodlawn	1 3/8	22%	
5	Pikesville	2	32%	

F. The following lines extend into Baltimore County on the first fare distance or zone:

No. 35	Hillsdale line	1/2 mile
No. 28	Lakeside line	1/2 mile
No. 26	Sparrows Point line	1 3/8 mile
No. 19	Hamilton line	3/8 mile
No. 32	Woodlawn line	1 mile

Your protestants and petitioners file herewith as part hereof Comparative Mileage Chart prepared by Sutton-Britcher & Company, Engineers, marked Halethorpe Exhibit A. We are also filing herewith as part hereof a Summary or Tabulated Statement setting forth the above facts and facts shown on said chart marked Halethorpe Exhibit B.

A. That the above figures show the mileage of the first and second fare zones and total mileages of the twelve various car lines running to or into the County.

B. The above figures show that the eleven other lines above mentioned have an average excess haul over the first fare or City zone from the center of the City of 57% more than the first fare of the Halethorpe line to the center of the City.

C. That the second fare distances of the Halethorpe line compared with the seven lines that do have a second fare zone shows that said seven lines in their second fare zones have an average excess of mileage of 38% over the Halethorpe second fare mileage.

D. That the total fare distances of the seven two fare lines compared with the total Halethorpe line two fare distances to the center of the City shows an average of 48% excess mileage over that of the Halethorpe line to the center of the City.

E. The *one fare* distances from the center of the City of said eleven other lines compared with the total Halethorpe line *two fare* distances from the center of the City shows that said eleven lines have an average excess of 10% haul for one fare over what the Halethorpe line is receiving for two fares. That said figures show that of said eleven lines only three of them have a less mileage for one fare than the Halethorpe line has for two fares and that excess in each case is a very small one, while eight of them have a material excess mileage for one fare over what the Halethorpe line is receiving for two fares.

F. That five of the said eleven lines, all five of which have material excess mileage for one fare over the Halethorpe line two fare distances, extend into Baltimore County appreciable distances.

That the communities thus specially favored in Baltimore County and having an undue and unreasonable preference and advantage over the localities of Halethorpe, Arbutus and Leeds and over your petitioners and protestants are:

Lorraine Cemetery on the Hillsdale line ½ mile beyond the City limits; Lakeside line, ½ mile beyond the City limits; Dundalk on the Sparrows Point line, 1⅜ miles beyond the City limits; Taylor Avenue beyond

Hamilton, ⅜ miles beyond City limits and Woodlawn 1 mile beyond the City limits.

The extension to Lorraine Cemetery in Baltimore County and the operation of this line by the United Railway and Electric Company is of recent date, there is no reason or justification for this extension that would not with much greater force apply to the Halethorpe line as the single fare to City limits was of greater mileage before this extension into Baltimore County than the total distance from the center of the City to Halethorpe on its two fare line.

The extension of one-half mile on the Lakeside line into Baltimore County has no justification in excess of the rights of your petitioners on the Halethorpe line. This one-half mile extension on the Lakeside line runs through large landed estates, is very little used, except by the servants of the residents, while Halethorpe, Arbutus and Leeds are largely built up by small home owners dependent upon the United Railway & Electric Company to get back and forth to their homes.

While your petitioners and protestants recognize Sparrows Point as an industrial center and Dundalk as a rapidly growing section, it must be taken into consideration that Halethorpe, Arbutus and Leeds have made their development under most adverse conditions as to carfare rates and there is no justification for Dundalk Junction having a mileage haul of 1⅜ miles for one fare in excess of what is given the Halethorpe line for two fares, and the same we respectfully submit, applies to Hamilton and Woodlawn.

We respectfully call attention to the fact that of the said four lines having only one fare, three of them extend beyond the city limits of Baltimore, the one that does not extend is the Overlea line and has an excess mileage of 10% for one fare over the two fare mileage of the Halethorpe line. The No. 35 Hillsdale line now extended to Lorraine Cemetery has 14% excess mileage for one fare over the mileage of the Halethorpe line two fares and extends into Baltimore County one-half mile. The Lakeside line has an excess mileage for *one-fare* of 16% over the Halethorpe line for two fares and extends

into Baltimore County for one-half mile. The No. 26 Sparrows Point line has a 22% excess mileage for one fare over the Halethorpe line for two fares and extends into Baltimore County 1⅜ miles. The No. 19, Hamilton line extended to Taylor Avenue has 26% excess mileage for one fare over the Halethorpe line and extended into Baltimore County ⅜ miles. No. 32, Woodlawn line has an excess mileage for one fare of 22% over the Halethorpe line for two fares and extends into Baltimore County one mile.

Your petitioners and protestants respectfully show that the property owners and residents of Halethorpe, Arbutus and Leeds are people of moderate circumstances, most of whom are buying their own homes and that any increase in the carfare of the Halethorpe line would be a great hardship and a disproportionate hardship upon them.

That the United Railway & Electric Company having alleged that the emergency increase fare asked for by them is largely necessary because of long hauls, your petitioners and protestants respectfully submit that the granting to the Halethorpe line of one fare from Halethorpe to Baltimore will be only placing Halethorpe appreciably upon the same basis as the various other communities served by the eleven lines above mentioned, the total mileage on the Halethorpe line to the center of the City will then be 10% less than the average mileage of said eleven other lines to the center of the City on their first fare.

That no emergency of the United Railway & Electric Company can justify it or this Honorable Commission in continuing unjust and unreasonable rates to the communities and residents of Leeds, Arbutus and Halethorpe, nor can any emergency of the United Railway & Electric Company justify it or this Honorable Commission in continuing an undue or unreasonable preference or advantage by other lines of the United Railway & Electric Company to any person or corporation or to any locality or to any particular description of traffic in any respect whatsoever as it is now doing upon the other lines of the United Railway & Electric Company extending into the suburbs of Baltimore and into Balti-

more County, nor can any emergency justify the United Railway & Electric Company or this Honorable Commission in continuing to subject the persons, corporations and localities of Leeds, Arbutus and Halethorpe to undue and unreasonable greater traffic charges than is charged on the great majority of the other lines of the United Railway & Electric Company for one fare over what is charged the Halethorpe line for two, to the prejudice and disadvantage of the persons, corporations and localities served by the Halethorpe No. 3 line.

That certainly no emergency of the United Railway & Electric Company can justify the increasing of the burden now unjustly and unreasonably imposed upon the persons, corporations and residents of the localities of Leeds, Arbutus and Halethorpe by the present unjust and unreasonable rates of two fares by still further increasing the undue and unreasonable preference or advantage to the persons, corporations and localities served by the eleven other lines of the United Railway & Electric Company to the still greater prejudice and disadvantage of the persons, corporations and localities served by the Halethorpe or No. 3 line.

The Benson-Link Realty Corporation, Northwest Halethorpe Corporation, Rittenhouse and Kelbaugh, Arbutus Land Company, Inc., Arbutus Building & Loan Association and Halethorpe Building & Loan Association are largely interested and largely responsible for the building of the homes and the financing of same in the neighborhood of Leeds, Arbutus and Halethorpe and have large sums of money invested in real estate and mortgages on property in this community and they sincerely represent to this Commission that unless the communities of Leeds, Arbutus and Halethorpe are relieved from the undue and unreasonable preference and advantage that is given to our competitors, the residents, corporations and localities served by said other

eleven lines over the communities of Leeds, Arbutus and Halethorpe, further development in this section must and will be appreciably and greatly retarded to the great loss and injury of said corporations and partnership and to the great injustice to all the residents of said communities and those of us largely financially interested in the development of property along the No. 3 line.

That your protestants and petitioners most respectfully insist that they are entirely within their legal rights in demanding that the discrimination that has heretofore and now exists against them and against the communities of Leeds, Arbutus and Halethorpe be stopped and that any new rates fixed by this Commission for the United Railway & Electric Company shall place your petitioners and the communities of Leeds, Arbutus and Halethorpe upon the same relative basis as the other eleven communities now served by the United Railway & Electric Company extending out into the suburbs of Baltimore and Baltimore County, and that in this position they are supported by the rulings of the Public Service Commission of New York on this particular point, and further by the U. S. Supreme Court in the case of Portland Railway Light & Power Company vs. Railroad Commission of Oregon, 229 U. S. 397, 57 Lawyers Edition 1248.

Now therefore your petitioners and protestants respectfully pray your honorable body that they be relieved from the unjust and unreasonable two fares now charged on the Halethorpe line between Halethorpe and the center of Baltimore and that they also be relieved from the undue and unreasonable preference and advantage now given their competitors, the persons and corporations and localities, now served by said other eleven lines hereinabove mentioned, which undue and unreasonable preference and advantage is working to the great prejudice and disadvantage of your respondents, and that

your respondents be placed upon the same basis as to fares as the patrons and localities served by said other lines of the United Railway & Electric Company by giving a one fare to and from the center of the City to Halethorpe.

Respectfully submitted,

BENSON, ROWE & CULLEN,

Attorneys for the undersigned

ARBUTUS LAND COMPANY, INC.,

CARVILLE D. BENSON, President.

NORTHWEST HALETHORPE CORPORATION,

CARVILLE D. BENSON, President.

BENSON-LINK REALTY CORPORATION,

CARVILLE D. BENSON, President.

ARBUTUS IMPROVEMENT ASSO.,

By LEWIS A. ENGEL, President.

Test: Secretary: GEORGE J. BERGER.

P. AUGUST GRILL, Atty.

WM. FACH, Cor. Sect.

PETITION FOR ONE FARE TO HALETHORPE.

Joshua S. Hull and 2201 other signers.

Halethorpe Exhibits referred to herein will be found in the Volume of Exhibits.

(9)

ORDER No. 11802.

Before the Public Service Commission of Maryland.

Case No. 2648.

In the Matter of the Application of The United Railways and Electric Company of Baltimore for the Establishment of a Permanent Rate of Fare of 10 Cents and for the Establishment of a Temporary Emergency Rate of Fare Pending the Establishment of Such Permanent Rate of Fare.

Whereas, by its petition filed herein on August 1st, 1927, The United Railways and Electric Company of Baltimore applied to the Commission for the establishment of a flat fare of ten cents cash for the conveyance of each passenger over twelve years, with half-fares at five cents each for children between the ages of four and twelve years, school tickets at five cents each, and commutation tickets at special rates, and asking that, pending such establishment of such new permanent fares, substantially increased fares be immediately put in force as temporary emergency fares; and

Whereas, the application having come on to be heard and it being the opinion and finding of the Commission, after due hearing, that the applicant, The United Railways and Electric Company of Baltimore, has failed to make it appear to the satisfaction of the Commission that the public interest requires the establishment of substantially increased fares as temporary emergency fares pending the establishment of permanent fares, or that the establishment of such temporary emergency fares is necessary for the purpose of providing adequate and efficient service, or for the preservation of property,

It is, therefore, this 20th day of September, in the

year Nineteen Hundred and Twenty-seven, by the Public Service Commission of Maryland,

Ordered: That the application of The United Railways & Electric Company of Baltimore for the establishment of substantially increased fares as emergency fares pending the establishment of permanent fares as prayed for in the petition herein be, and it is hereby, denied and dismissed.

And it is further ordered: That the application of The United Railways and Electric Company of Baltimore for the establishment of a flat rate of ten cents cash for the conveyance of each passenger over twelve years of age, with half-fares at five cents each for children between the ages of four and twelve years, school tickets at five cents each, and commutation tickets at special rates, be, and it is hereby, set for hearing at the office of the Commission, Baltimore, Maryland, on Wednesday, October 26th, 1927, at 10:00 o'clock A. M.

HAROLD E. WEST,

J. FRANK HARPER,

STEUART PURCELL,

Commissioners.

(10)

OPINIONS AND ORDERS OF THE PUBLIC SERVICE COMMISSION IN PREVIOUS RATE CASES AND THE VALUATION CASE.

(A)

CASES NOS. 1568 AND 1583, OPINION FILED JANUARY 7, 1919, AND ORDER NO. 4608.

PUBLIC SERVICE COMMISSION OF MARYLAND.

Before the Public Service Commission of Maryland.

Case No. 1568.

In the Matter of the Application of The United Railways and Electric Company of Baltimore for Permission to Make a Uniform Increase of One Cent in Cash Fares Heretofore Charged.

Before the Public Service Commission of Maryland.

Case No. 1583.

In the Matter of the Complaint of The Public Service Commission of Maryland vs. The United Railways and Electric Company of Baltimore, with Respect to the Fairness and Reasonableness of its Proposed General Increase in its Passenger Rates.

Appearances:

Messrs. Joseph C. France, Edwin G. Baetjer and

W. H. Maltbie, representing the United Railways and Electric Company of Baltimore;

Messrs. Joseph S. Goldsmith, Assistant General Counsel, and Osborne I. Yellott, Special Counsel, representing the Public Service Commission of Maryland.

Peter Peck, Esq., counsel for certain residents of North Baltimore.

J. Cookman Boyd, Esq., counsel for patrons of the Curtis Bay line.

Hearings:

November 18, December 2, 3, 4, 5, 6, 9, 16 and 17.

Arguments

December 17, 18 and 19.

OPINION

By the Commission. Filed January 7, 1919.

On July 19, 1918, the United Railways & Electric Company of Baltimore filed a petition with this Commission in Case No. 1568, setting forth at length some of the additional expenses to which it had been put and was still undergoing by reason of war conditions, and alleging in substance that it was no longer possible to render adequate service to the public at the existing rates of fare. Upon such statement of facts the Company asked "the approval of the Commission for a uniform cash fare of six cents in lieu of all cash fares now collected except in the case of children between the ages of four and twelve years; and in the case of such children and also in the case of all riders now using commutation tickets a uniform increase of one cent."

Paragraph III of said petition was as follows

"Your petitioner expressly disclaims any intention to establish by this proceeding any permanent rate of fare. It asks for relief purely as a war emergency and during the period of war condi-

tions. The sole purpose is to preserve its pre-war efficiency and to prevent, as far as possible, injury to its credit and to its organization and the deterioration of its plant, which would otherwise result. To preserve its credit, it must maintain its former margin of profit; and, without such credit it will be unable to obtain the money over and above amounts now available, for capital expenditures which it will be called upon to make.

"In order to preserve such credit, however, it will not be necessary, and it is not intended that any part of the increased revenue hereby sought should increase the margin of profit which the company has heretofore earned. An examination will show that, notwithstanding the increased charges which began soon after the outbreak of the European War, the Company was able to set aside a depreciation reserve of five per cent. of the gross revenue, and to pay a sufficient return to security holders to maintain the Company's credit. Since the entry of this country into the war, the situation in this respect has changed greatly, both by reason of the enhanced prices for and the difficulty of obtaining materials because of Government needs and priorities."

At the conclusion of such petition, the Company agreed:

"1. That the new rate shall from time to time and at all times be subject to readjustment and revision by the Commission on its own initiative;

"2. That the resulting increase of revenue shall be applied only to meet the war-produced increases with which it is and may be confronted;

"3. That the surplus, if any there be, shall be used only in accordance with the directions of the Commission upon application duly made."

Owing to the pressure of other matters of great public importance the Commission was unable to promise the representatives of the Company an immediate hearing upon the above petition, and it was uncertain

whether the case could be heard and determined before the end of the current year.

Consequently the Company on August 28, 1918, filed with the Commission its revised schedule "P. S. C. Md. No. 8," effective October 1, 1918, in which it provided for a flat increase of one cent in each of its existing adult, children and commutation fares. Subsequently the Company filed a letter giving notice of an increase of 1¼c in the case of employees' tickets sold in twenty trip books to the Maryland Steel Company, thus increasing this rate from 3¼c to 4½c, and an increase in its strip tickets sold the Central Foundry Company in lots from 4 1-6c to 5c each. In filing such revised schedule the Company eliminated the three cent transfer previously issued to patrons of its Curtis Bay line.

In the letter of transmission accompanying the above schedule, the Railways Company, through its president and attorneys, said:

> "III. As stated in the petition recently filed, the amount of increased revenue which will result from the proposed increased fares is uncertain, and can be determined only by actual trial; and the Company will keep the Commission advised as to the effect of the increase on its revenues.
>
> "IV. The Company understands that this Schedule of Rates is subject to any action the Commission may hereafter take on the petition heretofore filed."

On September 18, 1918, the Commission, of its own motion, filed a complaint alleging that the proposed increases in fares set forth in the above schedule were "excessive, unjust, unfair and unreasonable," and ordered that the matters complained of be satisfied by the Company or that the charges in said complaint be answered in writing within ten days.

On September 24, 1918, the Company filed its answer setting forth certain facts upon which it relied to show that the proposed increases in its fares were not excessive, unjust, unfair or unreasonable, and stating that

it did not know and could not tell, otherwise than by actual trial, how much additional revenue would be derived from the fare increase of one cent to become effective October 1, 1918. It accordingly suggested that the results of the increase after October 1st be checked for use at the hearing before the Commission in such a way as the Auditing Department of the Commission under the direction of the Assistant General Counsel might advise.

On September 26, 1918, the Commission passed its Order No. 4491, setting the issues raised by its complaint and the above answer for hearing on the 18th day of November, 1918, and further directing that the Company keep the Commission advised of the result of the increased fares effective October 1, 1918, and that such result be tabulated in such a way as should be approved by the Accounting Department of the Commission under the direction of the Assistant General Counsel.

On September 30, 1918, counsel for some fifty-one residents of North Baltimore who had filed protests against the Company's application in Case No. 1568, filed a further protest in Case No. 1583, in which they asked the Commission to pass an order notifying the Company to issue excess fare receipts to passengers paying the increased rates to the end that such excess fares might be refunded to such passengers in the event that the same might be declared unlawful by the Commission or by the Courts, the protest alleging further that the action of the Company in increasing its fares in the manner above recited was unlawful. This protest was submitted to the General Counsel of the Commission with a request for his opinion as to the right of the Commission to require such excess fare receipts. On October 2, 1918, the General Counsel filed his Opinion No. 367, in which he concluded that the Commission had no power to pass such an order, and further concluded that Section 768 of Article 4 of the Public Local Laws of Maryland relating to Baltimore City providing that the respondent Railways Company should charge five cents and no more for each passenger over twelve years of age, and three cents and no more for each child be-

tween the ages of four and twelve years respectively had been repealed by Section 31½ of the Public Service Commission Law.

Numerous other protests were filed in Case No. 1583 against the Company's proposed increases in its rates of fare.

Among these protests was one filed November 18, 1918, on behalf of the Interocean Oil Company, the United States Asphalt Refining Company, the Union Ship-Building Company, the Martin Wagner Company, Swift & Company, the Rasin Monumental Guano Company, the F. S. Royster Guano Company, and the Standard Acid Works, all large employers of labor with plants located at or near Fairfield in what is sometimes referred to as the Curtis Bay district, said district being reached by the Curtis Bay line of the Railways Company. In that petition the above parties complained both of the increases in fare effective October 1, 1918, and also of the equipment and service of the Company on the lines leading to Fairfield. This complaint was by order of the Commission consolidated with the main complaint of the Commission in Case No. 1583, and set for hearing on the same date.

At the preliminary hearing on November 18th, Special Counsel for the Commission, in his opening statement, made the point that Order No. 1010 entered by the Commission December 24, 1912, in Case No. 96, the complaint of the Old Frederick Road Improvement Association, et al, vs. The United Railways and Electric Company of Baltimore, and Order No. 1430 of October 20, 1913, in Case No. 579, the Complaint of Louis Knieling, et al vs. the same Company, in so far as said orders fixed the rates of one way and commutation fares to be charged by the Company over the portions of its lines therein referred to, had been violated by the Company's action in putting in effect its increased fares on said lines pursuant to its revised schedule No. 8, effective October 1, 1918, without the prior consent and approval of the Commission. On November 24, 1918, the Company filed its petition in the case referring to the above contention and praying the passage of an order sus-

pending such prior orders pending the hearing in this case. Inasmuch as the Commission's insistence upon the observance of such previous orders pending the hearing in this case would have resulted in great complications in the charging and collection of fares on many of the Company's lines to the general detriment of the service, and would have resulted in many instances in unjust and unreasonable preferences and discriminations, the Commission on November 25, 1918, passed its Order No. 4547 suspending said Orders Nos. 1010 and 1430 to the extent above stated pending the filing of its conclusions in Case No. 1583. Moreover, the Commission's Order No. 4491 of September 26, 1918, setting the Commission's complaint for hearing, and directing the Company to keep the Commission advised as to the result of the increased fares to become effective October 1, 1918, might well have been taken as an implied suspension of such earlier orders pending the Commission's investigation of the propriety of such fare increases, the Commission's understanding at the time of passing such order being that there was to be a uniform increase of one cent over all the lines in the Company's system as set forth in the schedule filed August 28, 1918, to become effective October 1st.

At the preliminary hearing on November 18th, Special Counsel for the Commission filed as exhibits in the case a number of tabulations of figures showing the earnings and expenses of the company in the past, such figures having been taken from the Company's books, and also filed a written analysis of these exhibits, which he read as an opening statement. Accompanying this statement he filed a chart and tabulation in which he estimated the number of revenue passengers who might reasonably be anticipated to be transported by the Company each month from November 1, 1918, to October 31, 1919. This tabulation was as follows::

TABLE X.

Estimate of Revenue Passengers November 1, 1918 to October 31, 1919.

1918.	
November	19,250,000
December	18,750,000
Total, bal. 1918	38,000,000
1919.	
January	17,500,000
February	16,500,000
March	18,000,000
April	18,000,000
May	19,000,000
June	19,500,000
July	19,700,000
August	19,500,000
September	19,000,000
October	19,500,000
Total, 1919	186,200,000

The details of the tabulation becomes of peculiar importance for the reason that the estimates therein contained were subsequently accepted by the Company as the basis of its own calculations as to its probable net earnings up to October 31, 1919.

The actual number of revenue passengers actually transported by the Company during the month of November, 1918, was subsequently shown to have been 18,642,833, or 607,167 (3.15%) less than the number estimated by Special Counsel. The Commission has carefully considered these estimates in the light of the past experience of the Company and of the various facts bearing upon the probabilities as to the future, and concludes that they can be accepted as a factor in the basis of calculations of probable future net earnings without prejudice to the interests of the general public.

FINANCIAL HISTORY OF THE RESPONDENT COMPANY.

The United Railways and Electric Company of Baltimore was formed by articles of Agreement of Consolidation, dated March 4, 1899, which resulted in a combination of all the street lines in Baltimore and Vicinity into a single system, the lines so consolidated being as follows:

The United Railways and Electric Company of Baltimore City, a consolidation of the Baltimore City Passenger Railway Company and the Baltimore and Northern Electric Railway Company; The Baltimore Consolidated Railway Company, a consolidation of the Baltimore Traction Company, the City and Suburban Railway Company and the Lake Roland Elevated Railway Company; The Central Railway Company; The Baltimore, Gardenville and Bel Air Electric Railway Company! The Baltimore, Catonsville and Ellicott's Mills Passenger Railroad Company, purchaser under mortgage foreclosure proceedings of the corporate properties of the Baltimore, Catonsville & Ellicott's Mills Passenger Railway Company; The Maryland Traction Company; The Baltimore & Curtis Bay Railway Company, the stock of which was owned by the Baltimore Traction Company; The Gwynn's Falls Railway Company! The Shore Line Electric Railway Company; The Pimlico and Pikesville Railway Company, and The Walbrook, Gwynn Oak and Powhatan Railroad Company, the stock in the last three companies having been owned at the time of the consolidation by the Baltimore Traction Company.

The authorized capitalization of the new consolidated Company at the date of the consolidation of March 4th, 1899, was as follows:

1st Consol. Mort. 4% gold bonds	$38,000,000
4% Cumulative pref. stock	14,000,000
Common Stock	24,000,000
Total	$76,000,000

At the time of the consolidation $18,000,000 of the 1st Consol. 4% bonds were sold and the proceeds used as part payment for the Baltimore City Passenger Rail-

way Company and the Baltimore Consolidated Railway Company; $15,366,000 were reserved to retire bonds of the constituent companies, and the remaining $4,634,000 were reserved or sold and the proceeds used for betterments, extensions, expenses of consolidation, etc. Not all of the bonds reserved for funding purposes were issued, but $29,450,000 of the same being in the hands of the public at the date of the hearing in this case, and the remainder of the authorized issue either being in the hands of the trustee to be used for the refunding of some $8,550,000 of the underlying bonds still on the properties of certain of the constituent companies, or in the treasury of the Company.

Shortly after the consolidation, to wit: March 30, 1899, the Company authorized the issue of $14,000,000 of Income Bonds with which to retire the preferred stock originally authorized. At the date of the hearings all but $23,000 of such preferred stock had been retired, and $13,977,000 of these Income Bonds were outstanding in the hands of the public. These bonds are secured by a mortgage covering all the property of the Company, subject to its 1st Consol. 4% bonds.

After the Baltimore Fire of February, 1904, it was found desirable to pass the interest on these Income Bonds for the purpose of securing funds for track reconstruction and repair, improvements to power houses and for the general improvement and betterment of the Company's property. Accordingly such interest was passed in 1904 and 1905, and on July 25, 1906 the Company entered into an agreement with the holders of such Income Bonds under which the latter, to the amount of $13,842,000, agreed to accept the interest due them from 1904 to 1910 inclusive in the shape of 5%, 30 yr. Income Funding Bonds, the Company agreeing unconditionally that the principal and interest on these latter bonds should be paid out of income ahead of the priorities of the Income Bond holders. Funding Bonds to the amount of $3,920,000 were issued under this agreement for the purposes aforesaid, and are still outstanding.

Of the $24,000,000 of Common Stock originally authorized, $20,461,000 has been issued up to this date. Prior to 1912 no dividends were paid upon this stock, the Com-

pany's surplus earnings over operating expenses and fixed charges being put back into the property. In 1912 a dividend at the rate of 3% was paid upon the common stock outstanding. To stockholders of record April 11, 1913, a semi-annual dividend of $1.00 per share was declared, this being at the rate of 4% per annum. Since 1913 dividends at the latter rate have been paid regularly.

The Company's financial plan of 1906 entered into after the Baltimore Fire of 1904 necessitated not only the diversion of income to improvements and betterments through the Income Funding Bonds above referred to, but also necessitated securing additional capital for new property, such as terminal stations, car-houses, equipment, extensions, excursion resorts, etc. The existing property was already heavily encumbered by the outstanding First Consol. Mortgage 4% Bonds, and the underlying bonds of certain of the constituent companies, the income, in turn, being pledged to the holders of the Income Bonds and Income Funding Bonds above referred to. As a comprehensive plan of refinancing did not seem feasible at that time, it was necessary to seek some new source of capital for the acquisition of new property. Accordingly the Maryland Electric Railways Company was formed on August 6, 1906, by the consolidation of the Maryland Electric Railway Company and the Baltimore and Annapolis Short Line, the latter at that time owning and operating a line, since electrified, between Baltimore and Annapolis—a distance by rail of twenty-two miles. The Maryland Electric Railways Company on September 15, 1906, executed a mortgage to secure an authorized issue of $8,000,000 of First Mortgage, 5%, 25 year Gold Sinking Fund Bonds, the same being a first lien upon the properties of such consolidated company. Thereupon the United Company entered into a contract with the Maryland Company under which the latter agreed to furnish funds for the purchase and construction of such property as the United Company might require, the property so acquired to be leased to the United Company at a rental of 6% per annum on the cost of the same. In addition the United Company agreed to pay, after March 30, 1910, 1½% per annum as a sinking fund,

and also to pay to a special sinking fund annually 7½% of the cost of equipment purchased with the bond proceeds until the equivalent of the full purchase price of the equipment had been paid. The United Company moreover agreed to pay all the cost of maintenance, operation, taxes, insurance, etc., and to purchase the property at the maturity of the bonds, or upon any default thereon, at a sum sufficient to retire such bonds. The Maryland Electric Railways Company continued to operate the Annapolis Short Line. At the date of the hearings in this case, there were $4,946,000 of the Maryland Electric Railways Company bonds outstanding in the hands of the public and $702,000 of the same in the treasury of the United Company, forming a part of its sinking fund securities.

Prior to the above arrangement with the Maryland Electric Railways Company, the United Company had leased from the Baltimore, Sparrows Point and Chesapeake Railway Company all the properties of such company and had guaranteed the principal and interest of the First Mortgage, 50 year, 4½% bonds of that Company amounting to $2,000,000, the whole amount of this issue being outstanding at the date of the hearings in this case.

In addition to the above obligations there were outstanding in the hands of the public at the date of the hearings in this case, the following securities of the Company:

Five Year, 5% gold notes	$1,222,000
" " Convertible 5% gold notes	1,528,000
" " " 6% " "	3,000,000
Bills payable	800,000
Total	$6,550,000

These notes were all issued with the consent and approval of this Commission, and the proceeds used for the refunding of outstanding obligations, the acquisition of property or for other proper corporate purposes of the Company, as provided by the Public Service Commission Law.

After deducting from the grand total of the above outstanding interest-bearing indebtedness the $3,710,000 of treasury and sinking-fund securities in the hands of the Company, it was found that the net outstanding interest-bearing indebtedness of the Company at the dates of the hearings in this case was $65,683,000, the outstanding common stock being, as above stated, $20,461,200 and of the preferred stock, $23,000, a grand total of $86,167,200 for the whole.

FAIR VALUE OF THE PROPERTY NOT AN ISSUE.

Section 30 of the Public Service Commission Law relating to valuations of property provides:

> "Every such valuation shall be so made and ascertained by the Commission that as far as possible it shall not disturb the value of the bonds of any of said corporations issued prior to the passage of this Act."

In the opinion of this Commission in the Matter of the Complaint of Davis Bacharch and others vs. The Consolidated Gas Electric Light and Power Company of Baltimore, decided January 13, 1913, P. S. C. Md. Vol. 4, p. 39 at 53-5, the Commission concurred in the opinion of its General Counsel, to the effect that this was a positive direction, binding upon the Commission, and based its order establishing rates upon the assumption that the outstanding bonded indebtedness of the Company at the time of the creation of the Commission in 1910 established the minmum fair value of the property for rate-making purposes as of that date. To this sum was added the amount of the bonds issued since the Commission was established and under its authority, these bonds representing actual expenditures for extensions and improvements, and thereby representing actual capital investments which the Commission in that case held unassailable.

The Commission, as at present constituted, expresses no opinion as to the legal effect of the above provisions of the Public Service Commission Law, and is not to be understood as conceding that in a case where the bonded indebtedness of a public utility is in excess of the fair

value of its property, the former shall be accepted as the minimum fair value of the property for rate-making purposes. Nevertheless this Commission fully recognizes the justice of the legislative intent that the actual value of the securities of a public utility outstanding in the hands of the public at the time of a rate-making inquiry should not be unduly prejudiced by any action of the Commission in the premises, whether such action be by way of arriving at the fair value of the property for rate-making purposes, or, more directly, by the actual fixing of rates for service.

This Commission's physical valuation of the property of the Railways Company has never been fully completed, and even if completed, would be of little, or no worth for rate-making purposes at the present time of abnormal property values and abnormal operating conditions.

As a matter of fact, the whole question of fair value of the Railways Company's property is of little or no relevancy in the present case, for the reason that the issues have been narrowed down by the Company's petition above referred to, by agreement of counsel, and by understanding between the Company and the Commission, that the sole issue involved is whether or not the increase of one cent in the Company's fares is reasonably required to enable the Company to render adequate service to the public, and yield to the owners of the property a return approximately equivalent to the return received under normal pre-war conditions.

QUESTIONS OF PUBLIC POLICY INVOLVED.

The above issue, and the acceptance of the same by this Commission as the real issue in the present case, involves grave and important questions of public policy.

(A) THE RIGHTS OF THE SECURITY HOLDERS.

It has been seen in the preceding statement of facts that the respondent Company has almost an absolute monopoly of the street railway business in the City of Baltimore and its immediate vicinity; that the Company is the outgrowth of the consolidation of a large number of previously more or less independent street railway

companies which formerly served this community, and the leasing of the properties of other companies, otherwise independent of the respondent Company; that the properties of said constituent companies were taken over by the consolidated company at valuations arrived at by agreements of the parties consummated long before the creation of the Public Service Commission of this State, and that the securities issued in exchange for such properties at valuations agreed upon nearly twenty years ago are outstanding in the aggregate of many millions of dollars in the hands of the public, who have invested therein upon the faith both of the property believed to be behind such securities and of the earning power of the combined railways system as a whole. Under such circumstances it would require no act of assembly to lead this Commission to the conclusion that the property rights of the holders of such securities should not lightly be impaired by any action of this Commission.

(B) IMPORTANCE OF THE RAILWAYS SYSTEM TO THE GENERAL PUBLIC.

In the course of a relatively few years the street railway has become one of the most important adjuncts to life in all thickly populated communities. With water, gas and electricity, it has become one of the prime necessities of life. Without it, business would come almost to a standstill, and social life in our cities and suburban communities would be most radically changed. So dependent have the people of our cities become upon the street railway, that an interruption of only an hour or so in the service, is almost instantly felt throughout the length and breadth of the community, and continuous bad or inadequate service is a thing which no community will long tolerate if redress of any kind can be found.

(C) OBLIGATIONS OF THE COMMISSION TO THE PUBLIC.

From the above reasons it follows that the prime obligation which any state regulatory body, such as a public service commission, owes to the public in connection with the property and affairs of a street railway corporation is, first, to see that the property of such corporation is

at all times so constructed, equiped and maintained as to enable those in charge of the same to render at all times adequate service to the public, and, second, to see that such character of service is at all times rendered.

The former proposition requires that the Company shall at all times be kept in such a condition, financially, that it can command investments in its property by the investing public, in order that necesary extensions to meet the demands of rapidly growing community may be made promptly when and as required, and that its roadbed, power houses and equipment may always be of a type and capacity to render adequate service economically and efficiently. There is no statutory law which can be resorted to in order to compel the investing public to invest its money in a public utility rather than in any other class of enterprise, and the only laws which can be appealed to are the natural laws of trade and commerce which lead men to invest their money where it may reasonably be expected to yield them a fair return for its use, and forbid the investment of money where there is no reasonable hope or expectation of such a return.

The obligations of a state regulatory body to see that those in charge of the affairs of a public utility render at all times adequate service to the public demands primarily that the company be permited to charge such rates for its service as will enable it to pay its operating expenses, including the maintenance of its property, its fixed charges, and a reasonable return upon the fair value of the investment. For if less than a reasonable return upon the investment is paid the owners of the property, they could not well be expected to continue the use of their money in the service of the public. Where it is questionable whether or not there is any equity in the investment over and above the bonded indebtedness the return should still be sufficient not only to meet the fixed charges themselves, but should be sufficiently in excess thereof to serve as a reasonable guarantee to the investing public that the company will at all times be in a position to meet such fixed charges promptly when and as due. Otherwise a relatively short season of poor business or abnormally heavy expenditures would result in default in the payment of interest upon the bonded in-

debtedness, and the instant destruction of the credit of the company with the probability of an early dissolution of the company itself.

Consequently it follows that a state regulatory body could do no greater harm to a community so entirely dependent upon the service of a street railway company as the public of Baltimore is dependent upon the service of the respondent Company, than to refuse to permit it to change such rates for its service as will enable it at all times both to command the investment of money necessary for the making of required extensions and continued maintenance of its property in efficient condition, and also to render such character of service as the needs of the community reasonably require. So to refuse would not only be to render it physically impossible for the company to render adequate service, but would also be to drive the company itself into a position of pecuniary decrepitude which would in the end result in bankruptcy and dissolution, after a long drawnout period of such inadequate service, during which the property and equipment would fall into a condition of disrepair which could only be corrected after the lapse of many years and the expenditure of many millions of dollars.

(D) PRIMARY OBLIGATION OF THE COMPANY TO THE PUBLIC

But neither the rights of the holders of the securities of a public utility, nor the fear of driving such utility into bankruptcy through the withholding of funds deemed necessary for its preservation, should ever be permitted by a public service commission to cause it to lose sight of the primary obligation of the utility to render adequate service to the public. This is an obligation which the utility assumes when it undertakes to serve the public of a given community, and becomes the more absolutely binding both in law and morals, when it pre-empts the entire field of service, and enjoys such an absolute monopoly in its chosen field as is the monopoly enjoyed by the respondent Company in Baltimore and its immediate vicinity.

(E) THE POLICY OF THIS COMMISSION

In conformity with these principles it has always been the polity of this Commission in its regulation of the affairs of public utilities made subject to its jurisdiction to allow such reasonable rates for their services, and to insist that in return for such reasonable rates the utilities shall render adequate service to the public dependent upon them for such service. And if, under such circumstances, a public utility cannot succeed in its chosen field, then it will be far better in the end both for its security holders and the general public, for it to be forced out of such field and required to give way to others who will be only too glad to enter the field and undertake to render adequate service once the original utility is out of the way.

STATUTORY LAW INVOLVED.

Section 11 of the Public Service Commission Law of this State provides as follows:

> "Every order of the Commission shall take effect at a time therein specified *and shall continue in force for a period therein designated* unless earlier modified or abrogated by the Commission, or unless such order be unauthorized by this Act, or be in violation of a provision of the Constitution of the State or of the United States."

Section 13 provides in part as follows:

> "All charges made or demanded by any such common carrier for the transportation of passengers * * shall be *just and reasonable,* and not more than allowed by law, *or by order of the Commission,* conformably with the law."

Section 23 provides in part as follows:

> "Whenever the Commission shall be of the opinion after a hearing, upon its own motion, or upon a complaint made as provided in this Act, that the rates, tolls, fares or charges * * by any common carrier * * are unjust, unreasonable * * *the Commission shall determine the just and reasonable*

rates, tolls, fares and charges to be thereafter observed and in force as the maximum to be charged for the service to be performed, and shall fix the same by order."

Section 31½ provides in part as follows:

"All acts or parts of acts heretofore passed and now existing, prescribing or limiting the price at which any * * * corporation subject to this Act may furnish, sell or dispose of its * * * produce or utility are hereby repealed, *it being the intent of this Act that the powers of the Commission herein created to ascertain the price of such * * product or utility as provided for herein, shall supersede all such Acts or parts of Acts aforesaid."*

Section 796 of the Baltimore City Charter provides in substance that the United Railways and Electric Company of Baltimore shall charge five cents and no more as a fare for the conveyance of each passenger over twelve years of age, and three cents, and no more for each child between the ages of four and twelve years, from any point on any of its lines to any other point on such lines within the city of Baltimore, with free transfers at all points of intersection with other lines not forming a route which would permit a passenger to return in the same general direction.

Section 2 of Chapter 82 of the Acts of 1918 provides in substance that all the provisions of the Baltimore City Charter shall be applicable to such portions of Baltimore County and Anne Arundel County as were annexed to and made a part of the City under that Act.

The above several provisions of the law gave rise to a variety of contentions during the course of the argument, all of which contentions will be hereinafter considered.

THE COMPANY'S NEED FOR INCREASED REVENUES.

That the Company is reasonably entitled under conditions at present existing to an increase of one cent in each of the fares specified in its schedule P. S. C. Md. No. 8, there would seem to be little or no question.

The exhibits show that during the years 1912 to 1917 inclusive, the average of which may fairly be taken as representing normal conditions, the Company earned over and above its operating expenses, taxes and maintenance expenses, including in the later years an annual appropriation to its depreciation reserve account of five per cent. of the gross revenue, an average of $3,659,609 available for the payment of fixed charges and dividends, any resulting balance going into the corporate surplus account. During the above six years such average net earnings amounted to 6.337% of the average funded debt of the Company, the yearly ratios ranging from 6.134% in 1917, as the lowest, to 6.731% in 1916, as the highest. During the above period the average fixed charges of the Company amounted to $2,810,807, thus leaving an average balance of $848,802 available for dividends and surplus. It will be noted that the above net earnings amounted to approximately one and one-third times the amount of the Company's fixed charges, a ratio by no means excessive in view of the desirability of upholding the credit of the Company, and in fact considerably less than that frequently demanded by reasonably conservative investors.

Assuming the above fairly to represent operating results, under normal pre-war conditions, the Company contented itself at the hearings with merely pointing out the effects which war increases in wages alone have upon its net earnings in the future, taking no account of any possible increases in the costs of materials and supplies over and above the actual costs of such during the twelve months ended September 30, 1918, in one instance, and October 31, 1918, in another.

Two exhibits were filed upon this theory. In the first the Company took the actual operating income for the year ended September 30, 1918, on the basis of the existing five cent fare, to wit: $11,351,019, and deducted therefrom the total of its actual maintenance and operating expenses during the year, $6,201,242, plus a correction for increased wages alone, not reflected in operating results during that year, $1,479,000, leaving a balance of $3,670,277. From this sum was deducted $1,198,790 paid for taxes during that year and $567,552 for depre-

ciation, leaving a balance of $1,903,935, to which was added non-operating income amounting to $100,101, yielding a total balance available for fixed charges and dividends of $2,004,036. Inasmuch as the fixed charges alone had amounted during the year to $3,047,151, this exhibit showed a deficit in interest of $1,043,115, meaning that upon the theory of this exhibit the Company would have had to exhaust its entire accumulated surplus and borrow funds in addition with which to pay its fixd charges in full had it been obliged to pay throughout the year the labor prices which were current at the end of that year. For further illustration the Company in this exhibit added to the above deficit of $1,043,115, the sum of $905,611, representing the average annual surplus earnings over fixed charges during the four years ended December 31, 1917, thus showing a total deficit in such earnings of $1,940,726 as compared with the preceding four years. The theory of this exhibit was that the Company could not reasonably expect its gross revenues during the year ending September 30, 1919, to be greater than during the year ended September 30, 1918, without a fare increase, and that the prices current for labor September 30, 1918, would remain practically constant during the ensuing twelve months.

In the second exhibit of this series, the Company undertook to prognosticate for the year ending October 31, 1919, upon the basis of the estimates of the Commission's Special Counsel of the number of revenue passengers to be carried during those twelve months as contained in the table set forth earlier in this opinion.

Upon this basis, and assuming that no increase in fares would be permitted, it was shown that the total passenger revenue would amount to $10,929,750. To this sum was added "other transportation revenue" and "other railway revenue" as actually received during the twelve months ended October 31, 1918, amounting to $303,847, there being no reason to assume that these items would be materially different during the next twelve months. From the sum of the above items, to wit: $11,233,597, there was deducted actual operating expenses for the twelve months ended October 31, 1918, $6,347,514, plus a correction for increased wages not yet

reflected in the above figures, $1,326,000 a total of $7,673,514, leaving a balance of $3,560,083. From this balance was deducted the taxes actually charged against earnings during the twelve months ended October 31, 1918, $1,213,413, and depreciation, 5% of gross operating expenses or $561,679, leaving a balance of $1,784,991 to which was added non-operating income amounting to $89,658, being the amount actually received during those twelve months, these computations yielding a total of $1,874,649, out of which to meet the fixed charges and dividends. The fixed charges for the ensuing year were computed upon the basis of twelve times the fixed charges for October, 1918, and amounted to $3,188,904, thus leaving a deficit in interest of $1,314,255. To this sum was added $905,611 representing the average annual surplus for the four years ended December 31, 1917, resulting in a total deficit in net earnings of $2,219,866 as compared with such previous years.

If the actual net earnings during the preceding four years had been disregarded over and above the amount of $818,488 representing the pre-war annual dividends upon the common stock, the deficit would still have been $2,132,703. Or if the average net earnings over fixed charges for the six years ended December 31, 1917, had been used instead of the average for four years only, the deficit would have been $2,163,057.

The above exhibits were designed primarily to demonstrate beyond any question that the Company was badly in need of increased revenues. At the same time they demonstrated quite convincingly that the amount of increased revenues required if the Company were to be kept in the future upon substantially its pre-war basis as to earnings, was approximately the amount which might reasonably be expected to be yielded by the one cent increase in the Company's fares as set forth in its revised schedule P. S. C. Md. No. 8.

Upon the estimated basis of 224,200,000 revenue passengers during the year ending October 31, 1919, as originally made by the Commission's Special Counsel, and accepted by the Company for purposes of illustration, the increased revenues from the additional one cent fare would amount to $2,242,000, or but a few thousand dol-

lars more than sufficient to pay the Company's operating and maintenance expenses, taxes, fixed charges and the average annual surplus earned during the four years prior to December 31, 1917.

Both at the hearings and in the arguments made at the conclusion thereof, counsel for the Company contended that the estimates for the Commission's Special Counsel as to the number of passengers likely to be carried during the coming year were excessive, both in that they failed to take sufficiently into account the teniency of the increased fare to diminish traffic, and in that they failed to take sufficiently into account the falling off in traffic which would result by the closing down of the munition plants and other war industries which would cease with the coming of peace. Their estimate of the effect of this alleged excess in estimate was $300,000. They also contended that the cost of additional service which the Company would be required to give during the ensuing year would be not less than $400,000 more, and that it was questionable under all the circumstances whether the Company would be able, even with the increased fares, to earn more during the ensuing twelve months than an amount sufficient to pay all its expenses of operation and maintenance and meet its fixed charges.

Granting that there may be merit in the above contentions, it is also at least equally probable that there may be, during the ensuing twelve months, a substantial falling off in the cost of labor and materials in comparison with the peak prices which were made the basis of the above estimates.

The relative or net effects of the various counteracting tendencies resulting both from the increases in the Company's rates of fares and from the cessation of hostilities, it is impossible for this Commission to forecast at this time with any reasonable degree of assurance. Time and experience alone will demonstrate the correctness or incorrectness of the various assumptions made in the exhibits referred to, and in the arguments of counsel.

Meanwhile the Commission is satisfied from the evidence before it, only a very small portion of which has

been referred to in this opinion, that if the respondent Company is to be put in a position to render adequate service to the people of this community, it must have a substantial increase in its revenues, and that the amount of such increase required in the immediate future is approximately the amount which may reasonably be anticipated to be yielded by the increase of one cent in practically all the Company's fares.

Ever since it developed early in the course of the hearings that there was such a need for increased revenues, the Commission has given much thought to the possibility of requiring the Company to adopt a form of ticket or check to be sold in small quantities at a reduced rate. The following table shows the extent to which a variety of such reductions would have upon the Company's gross revenues upon the assumption that all passengers would use such tickets. This assumption would have to be modified by the further assumption that relatively few would use the tickets sold at a slight reduction while relatively a great many more would use them if sold at a greater reduction.

				Decrease in Revenue.
10	tickets	for	55c	$1,120,000
9	"	"	50c	994,560
8	"	"	45c	819,840
7	"	"	40c	540,640
6	"	"	35c	371,840

In view of the very great reductions in the Company's revenues which would result from the sale of tickets at any of the above prices, as compared with the relatively small saving to the individual user of such tickets, and in further view of the Company's apparent need for the whole of the increased revenues which are likely to result in the flat increase of one cent in each of its fares, the Commission has concluded that it would be most unwise at this time to order the sale of tickets in bulk at reduced rates.

The Company will be required by the Commission's order to make regular monthly reports of its operating results under the new rates effective October 1, 1918,

and if it appears at any time that a reduction of less than the full one cent increase can be properly required, such reduction will be made through the sale of tickets in small quantities at such prices as may be deemed expedient from time to time.

Meanwhile public convenience can be greatly promoted by the sale of tickets or fare checks in bulk for multiples of six cents by the conductors on the cars, in addition to their sale at the offices of the Company, banks, department stores, etc., as at present conducted, and the Company will be expected to perfect a plan in the near future by which this will be done.

CONDITIONS OF ORDER.

Special Counsel for the Commission who was also representing the public, contended that the order of the Commission prescribing the rates of fare hereafter to be charged by the respondent Company should be limited to a definite period as provided by Section 11 of the Public Service Commission Law and suggested that such period be one year, after which the fare should be restored to five cents, unless the Commission should conclude at the expiration of that period that the service rendered by the Company has been reasonably adequate throughout the same, and that a continuance of a charge in excess of five cents was reasonably necessary to insure the continuance of such reasonably adequate service in future. Counsel for the Company, on the other hand, contended that the increased fare should be permitted preferably for an indeterminate period, or, if that were not feasible under the law, for a definite period longer than one year, subject to a re-opening of the case at any time by the Commission and a reduction of the fare in the light of the evidence then adduced.

In passing upon the merits of these respective contentions we must bear in mind the statements contained in the Company's petition of July 19, 1918, for such increase, as set out at length in the beginning of this opinion, and also the statements made in the letter of the Company transmitting its revised schedule P. S. C. Md. No. 8, as set out on page four of this opinion. By these statements the Company expressly disclaimed "any in-

tention of establishing by this proceeding any permanent rate of fare," and asked only "for relief purely as a war emergency and during the period of war conditions," further stating that its sole purpose was "to preserve its pre-war efficiency, and to prevent, as far as possible, injury to its credit and to its organization and the deterioration of its plant" which would result without such increase in its fares.

Since the filing of such petition and revised schedule the war has virtually terminated, but the reason underlying the application for increased fares is also applicable to a reasonable period of readjustment following the war. How long that period of readjustment will continue it is impossible for this Commission to determine, but bearing in mind the nature and avowed objects of the application, it seems to this Commission most desirable that the right to charge such incrased fares should be limited to a fixed, definite period of one year, subject to the power of the Commission to extend the same in whole or in part for a further period at the end of that year if such a course is then deemed wise and expedient. The readjustment which is to follow the war will not come all at once. It will in all probability be a process extending over a period of years. In some respects it will probably come within the year, in others, not for many years. Meanwhile it is hardly possible that operating costs will remain at the high figures which were made the basis of the Company's exhibits in this case, and it is more than probable that by the end of the year the Company will be able, with proper and efficient management to meet all its corporate requiremnts with a rate of fare materially less than six cents, even though in excess of five. Under such circumstances it would seem desirable that at the end of the year the burden should be upon the Company to establish its right to a continuance of an increased fare rather than that such burden should be upon the public or upon this Commission to demonstrate that any portion of such increased fare is not then necessary.

Moreover, the theory of the Commission's Special Counsel that a continuance of an increase in fares at the end of the year should be made conditional upon the

rendition of reasonably adequate service in the meantime, is eminently sound and just under the peculiar circumstances of this particular case.

It would serve no sufficiently good purpose for this Commission at this time and in this connection, to enter into a recital of the defections of the respondent Company with respect to its service to the public.

The Company's repeated violations of the orders of this Commission heretofore passed with respect to service, and of this Commission's rules adopted at the suggestion of the Company itself, and after its promises to adhere to and abide by the same, coupled with the fact that for a long period in the past its service has been in many respects inadequate and unsatisfactory to the public, have all led this Commission to the conclusion that those in control of the affairs of the Company have not been in the past fully alive to their plain duty to the public in this respect. This is a conclusion which has not been formed since the United States entered the European War, but was reached long before that war began. It is a conclusion, moreover, which has been modified rather than strengthened during the period our country has felt acutely the effects of war, and is therefore not to be understood as referring exclusively to war conditions.

The authorities of highest repute are practically unanimous to the effect that the public should not be required to pay for a public service more than such service is fairly and reasonably worth, and the cost of rendering that service is merely one of the evidences of the fair worth of the same. This Commission has concluded from the facts before it in this case that the fair worth of reasonably adequate street railway service to the community served by the respondent Company, and under existing conditions, is six cents, as the basic rate for adults, and four cents as the basic rate for children between four and twelve years of age.

By our order passed in this case, we are about to take the Company at its word, that with a rate of six cents it can render the public of this community reasonably adequate service during the ensuing year, and will permit

it to charge that rate. If it does not comply with that undertaking, there can certainly be no good reason why such increased rate should be continued thereafter, unless by that time conditions have materially changed for the worse from an operating standpoint, rather than for the better.

Meanwhile, during this period of experimentation with such increased fares, the Company should be permitted to work out its own plans for the improvement of its service, with as little interference with such plans on the part of this Commission as may be found reasonably practicable in view of this Commission's continuing obligation to the public with respect to the service of this Company. In determining whether or not the service has been reasonably adequate during the period throughout which the increased fares will be permitted, this Commission will be governed largely by the standards of service embodied in its rules heretofore adopted with the acquiescence of the respondent Company, but will not be unmindful of any abnormal conditions due to the war, which may extend into the period of readjustment about to follow. During this period, moreover, the Commission will continue its present system of making checks of the traffic over the Company's lines, and will welcome expressions from the public as to the character of the service being rendered by the Company, whether the same be deemed good or bad. Except where complaints require action upon the part of the Commission, they will be filed for reference at the end of the period fixed for the continuance of such increased charges.

Counsel for the Company contended in the course of his argument that such limitations upon the right to charge such increased fares would seriously militate against the credit of the Company. This Commission is fully mindful of the desirability of upholding the credit of all public utilities subject to its jurisdiction to the fullest extent consistent with justice to the general public. But it is also fully mindful of the ultimate dangers of a false credit bolstered up by orders establishing rates for services which are not justified by the fair worth of the service rendered.

This Commission has given the investing public, in a

number of instances in the past ample assurances that so long as public utilities subject to its jurisdiction render the public reasonably adequate service, they shall be permitted to charge for that service the fair and reasonable worth thereof. And it is that same assurance that we are endeavoring by this opinion and our order passed pursuant thereto, to give those who may in future be minded to invest their money in the securities of the respondent Company. But beyond that, this Commission would not wish to be understood as going, and it conceives it to be its duty to the investing as well as to the general public to declare that it will under no circumstances permit any public utility to charge the public an unreasonable price for inadequate service.

In passing upon the reasonable adequacy of service it has not been this Commission's practice in the past, nor is its intention in the future, to be unduly captious or over-critical in arriving at its conclusions. This Commission fully realizes that there cannot well be any fixed and arbitrary standard of street railway service applicable to all conditions and under all circumstances. Due allowances have always been made for lapses in efficiency of service due to abnormal conditions and occasions, and it is only in cases where it had been shown that the Company has evinced a clear disregard for the ordinary rights and convenience of the public that this Commission has declared its service inadequate. With the increase in fares which will be permitted by our order in this case, it is not to be expected that the Commission will be as tolerant of the defections of the Company with respect to service as it has been in the past, when it was realized that the Company was operating in the face of difficulties which were enhanced by its lack of sufficient funds to render the highest grade of service. The Company will be expected to make the most efficient use reasonably possible of every dollar of revenue received during the period the increased fare is permitted to remain in effect.

THE SKIP-STOP PLAN.

On April 15, 1917, the respondent Company inaugurated upon its North Avenue and Edmondson Avenue lines a new plan of operation, generally known as the "Skip-Stop" plan, under which system of operation the

cars skipped each alternate street crossing, there being certain exceptions to the general rule, particularly as respects transit crossings. Owing to the subsequent rerouting of some of the cars on these lines the "Skip-Stop" plan was extended to portions of the Garrison Boulevard line and the Liberty Heights branch of the Linden Avenue line.

Directly after this scheme was adopted the Commission began receiving communications respecting the new system of operation, some of which condemned while others praised the plan. By Order No. 3832 entered on September 10, 1917, (P. S. C. Md. Reports, Vol. VIII, pp. 244-247) the Commission established rules to be observed by the Company in respect to the method of procedure this Commission in the determination of street intersections at which the railways company should not be required to stop its cars to take on or discharge passengers.

After the plan had been in effect several months the Commission, upon its own motion, and in order fully to develop the controversy, filed a complaint respecting the "Skip-Stop" plan, and thereafter held hearings extending over several days, at which opportunity was afforded all persons desiring to testify either on behalf of or against the "Skip-Stop" plan of operations, either as a whole or with respect to particular stops which were skipped under the system. On October 6th the Commission filed its opinion (Vol. VIII, pp. 275-280), wherein it held that the "Skip-Stop" plan of operation as theretofore practiced by the Railway Company was unjust and unreasonable, though the Commission did not require the Company to restore all of the stops formerly in effect. By order No. 3887 entered on the same day, (p. 281) the Commission directed the respondent Company to restore a dozen or more stops which it had abandoned under the aforesaid plan of operation and by subsequent orders required the restoration of still other stops.

Thereafter the railways company began formulating plans looking to the adoption of a "Staggered-Skip-Stop" plan of operation on certain of its lines, under which scheme cars stop to take on and let off passengers at alternate street crossings in both directions. That is to say, if the cars stop at a given corner when on the west-bound

trip, that corner is skipped on the east-bound trip, subject to the same exceptions respecting transit crossings, etc., as in the case of the original "Skip-Stop" plan, the object of the "Staggered-Skip-Stop" plan being to equalize, as far as possible, the inconvenience to the Company's patrons. In April last the co-operation of this Commission was sought by the Special War Committee of the National Asssociation of Railway and Utility Commissioners, by the Conservation Division of the United States Fuel Administration and by the Fuel Administrator of Maryland in the matter of conservation of fuel by the respondent Company, it being represented that a great saving of fuel would result were said Company permitted to put into effect the "Staggered-Skip-Stop" plan of operation upon all of its lines. The Commission on April 9, 1918, entered its Order No. 4262 by which the Railways Company was authorized and requested to adopt and put into operation at as early a date as practicable the "Staggered-Skip-Stop" plan of operation. By the terms of this order the Commission reserved unto itself the right, at any time thereafter, to modify or change any particular application thereof when such particular application was found to be an unreasonable exercise of the authority granted the Railways Company by the said order. By the same order the rules of procedure established by Order No. 3832 aforesaid were modified to meet the new conditions. From time to time thereafter the Commission has entered orders requiring the restoration of specific stops when the restoration of such stops was found to be necessary in the interest of the public service, but the "Staggered-Skip-Stop" plan of operation as a whole remained in effect on all lines of the Company until December 23, 1918, when it was abandoned pursuant to an oral order of the Commission given the officers of the Company during the course of the hearings in this case.

During such hearings the plan had been made the subject of attack by counsel for the public, and an opportunity was given the general public to make objections to its abandonment. No such objections were made, and the President of the Company, when on the stand declared that the plan as such had been a failure in that it had not saved the money it had been expected to save, that it had not resulted in any noticeable saving in the running time

of the cars, and that the small amount of money and time saved by the plan were far more than outweighed by the general inconvenience to the public resulting therefrom. The Commission concurs in these conclusions, and a formal order will be passed in the appropriate case abolishing the same.

ZONE EXTENSIONS TO NEW CITY LIMITS.

During the course of the hearings it was contended by counsel for certain residents of North Baltimore that the legal effect of that portion of Section 2 of Chapter 82 of the Acts of 1918, providing that all existing provisions of the Baltimore City Charter should be applicable to such portions of Baltimore and Anne Arundel Counties as were annexed to Baltimore City by that Act, was to extend the provisions of Section 796 of the City Charter prescribing certain fares within the old limits of the City to such annexed portions of Baltimore and Anne Arundel Counties, and thereby make uniform the fares within the limites of Baltimore City as enlarged by such Act. As hereinbefore stated, this Commission had been advised by its General Counsel October 2, 1918, that the effect of the enactment of the Public Service Commission Law was to repeal that portion of Section 796 of the City Charter above referred to. When the question was raised in a somewhat new form during the course of the argument, it was again referred to the General Counsel, who advised the Commission in his opinion of December 31, 1918, that by the several sections of the Public Service Commission law hereinbefore referred to, the whole matter of the rates of fare proper to be charged by the respondent Company has been committed by the legislature in the first instance to determination by this Commission, subject to review by the courts as in said Law provided. The Commission concurs in such opinions.

This Commission is not prepared at this time to express any final conclusion as to the extension of existing fare zones, for the reason that this question was not fully presented to it at the hearings in this case, and that an extenison of such zones at the present time and under existing conditions would so far reduce the gross earnings of the respondent Company as to render the increase of one

cent in the fares over existing lines, entirely inadequate to meet the operating requirements of the Company.

The general question of fare zones should be made the subject of an independent study, and this cannot be done until the effect of the increased fares, on the basis of the existing zones, has been demonstrated by experience over a reasonable period.

For the present no order will be passed upon this point.

THE CURTIS BAY LINE.

The Curtis Bay Line of the respondent Company begins at the intersection of Baltimore and Light Streets, in the heart of the city, and runs south along Light Street to a point near the northern end of the Hanover Street bridge, where it is diverted to Hanover Street and crosses the Middle Branch of the Patapsco River over such bridge into what was formerly Anne Arundel County and is now a part of Baltimore City. Then it passes to the town of Brooklyn, which it leaves by way of Patapsco Avenue and passes into the town of South Baltimore, its southern terminus, a distance of 3.77 miles beyond the old city limits. At Stone House Cove, a point about midway between Brooklyn and South Baltimore, there is a junction, at which at present a jerk-water line runs easterly to East Brooklyn and Fairfield, a thriving community located on the west bank of the main body of the Patapsco River, East Brooklyn also fronting on Curtis Bay. The section served by this jerk-water line is occupied mainly by large manufacturing enterprises employing thousands of laborers, some of the latter having their homes in the immediate vicinity, but the great bulk of the same residing in Baltimore City.

Prior to the filing of the respondent Company's revised schedule, P. S. C. Md. No. 8, effective October 1, 1918, it was the practice of the Company to issue free transfers between its other lines and that portion of the Curtis Bay line extending from Baltimore and Light Streets on the north to the southern end of the Hanover Street Bridge (south bank of the Middle Branch of the Patapsco) on the south, and then to charge an extra full fare of five cents on the remainder of the line south of the latter point. In the alternative it was the practice of the Company to

issue a cash transfer for three cents from either section of this line to the other, where a cash fare had originally been paid on the first. Transfer from the main line to the jerk-water line running to Fairfield was without charge in either event.

Revised schedule, P. S. C. Md. No. 8, eliminated the above three cent cash transfer, with the result that the fare to Brooklyn or Fairfield has been increased from eight to twelve cents.

Without going further into the details of this rather complicated situation, and without undertaking at this time to pass upon the reasonableness or unreasonableness of the fare as it originally stood, the Commission has concluded, in view of the avowed intention of the Company to increase its existing fares but one cent in any instance, that it should hereafter be required to issue cash transfers on said line for four cents instead of three cents previously charged, thus making the full fare ten cents instead of eight as heretofore and twelve as now.

The evidence upon this branch of the case also showed a glaring case of inadequacy of service to the Fairfield District. Three ways were pointed out by which this service could be materially improved without any very great expenses, (1) by side tracking some of the Curtis Bay main line cars at Stone House Cove; (2) by completing the Fairfield extension as originally contemplated in the form of a complete loop over one or the other of the routes suggested, and putting additional cars thereon, or (3) by installing a series of turn-out switches on the existing jerk-water line pending the completion of such loop, and running additional cars over the same. Whichever of these plans the Company may deem it proper and expedient to adopt, the service must be improved within the immediate future.

While the complaint of the Fairfield patrons was heard with the main complaint as a matter of convenience, it is deemed advisable by the Commission to dispose of the same for the present by a separate order.

An order upon this branch of the case will be duly passed pursuant to this opinion.

RECENT STEPS LOOKING TO IMPROVED SERVICE.

Something over a year ago the respondent Company employed the firm of A. L. Drum & Company, Consulting and Construction Engineers, of Chicago, to come to this city and make a complete survey of the situation with a view of advising the management of as to the propriety of re-routing certain of its lines in order to diminish as far as reasonably possible the rapidly growing congestion of traffic in the central business portion of the city. The investigation of this form covered a considerable period and most of the proposed re-routing has been accomplished, with beneficial results which will no doubt be more evident as time goes on.

More recently the respondent Company has employed Day & Zimmerman, Inc., Engineers of Philadelphia, for the purpose of making an exhaustive study of traffic conditions generally over the entire system and advising the management in the premises. This latter work has not yet progressed far enough for this Commission to speak with any degree of positiveness as to its probable effect upon the service of the Company, but it is nevertheless encouraging to note that the Company is availing itself of expert service of this character in attempting to solve the problems of service which confront it.

It has been largely in view of this attitude upon the part of the management of the Company toward outsisde advice and assistance in the comparatively recent past, that this Commission has been so sparing in its criticism of the service which has heretofore been rendered, and it is sincerely hoped, for the sake of both the Company and the public, that such attitude will continue to prevail in the future.

An order will be passed embodying the principal conclusions embodied in the aforegoing opinion.

ORDER NO. 4608.

Before the Public Service Commission of Maryland.

Case No. 1568.

In the Matter of the Application of The United Railways and Electric Company of Baltimore for permission to make a uniform increase of one cent in cash fares heretofore charged.

Before the Public Service Commission of Maryland.

Case No. 1583.

In the Matter of the Complaint of The Public Service Commission of Maryland.

Vs.

The United Railways and Electric Company of Baltimore, with respect to the fairness and reasonableness of its proposed General Increase in its Passenger Rates.

Pursuant to the conclusions reached in the aforegoing opinion, it is ORDERED, this 7th day of January, 1919, by the Public Service Commission of Maryland:

1. That from and after this date and until December 31, 1919, and for no longer, unles such period be extended for a further period as hereinafter provided, or this order be earlier modified or abrogated by further order of this Commission, the United Railways and Electric Company of Baltimore shall be permitted to charge and collect for the transportation of persons over its several street railway lines, in Baltimore City and vicinity, the following rates, fares and charges, to wit:

(*a*) Six cents fare for the conveyance of each passenger over twelve years of age, and four cents for each child between the ages of four and twelve years, on any of its lines between the points designated under the first general caption in its schedule P. S. C. Md., No. 8, filed with this Commission August 28, 1918, effective October 1, 1918, or between intermediate points, in either direction, on any of such lines; except in the case of its Curtis Bay line, in which case the fare to be charged shall be modified under the conditions set forth in a separate order of this Commission passed on this date:

(*b*) Full fare and half fare when paid by continuous trip tickets, on the lines and between the points on the Company's Gorsuch Avenue, East Monument Street (Orangeville), Third and 8th Streets, Union Avenue, South Charles Street, Walbrook—Hillsdale, Shore Line and Ferry Bar Lines, as designated in said schedule P. S. C. Md. No. 8, otherwise the regular fare to be collected between the points so designated;

(*c*) Four and one-half cent when paid by commutation tickets sold for use on lines operating over more than one fare zone between the points so designated in the Schedule P. S. C. Md., No. 8, aforesaid, and five cents when paid by commutation tickets sold for use on lines operating over more than one fare zone between the points so designated in said schedule, said commutation tickets to be sold in the maner and subject to the conditions set forth in said schedule with respect thereto.

(*d*) Four and one-half cents between Sparrows Point and Highlandtown when paid by employee's tickets from 20-trip books sold in lots to the Maryland Steel Company for distribution; five cents between Dundalk and city points, when paid by strip tickets sold in lots to the Central Foundry Company for distribution; and two and one-half cents on the Lakeside line when paid by tickets from 200-trip books sold to the landowners along such line, all such tickets to be subject to the conditions printed thereon and to the rules of the Company governing the use thereof, the full fare in each of said cases otherwise to be paid.

2. That from and after the hour of midnight on the 31st of December, 1919, said Company's right and privi-

lege to charge and collect the increased fares herein authorized to be charged and collected, shall cease and determine, and said Company shall thereafter be permitted to charge no fares in excess of those charged by it on September 30, 1918, unless this Commision shall in the meantime, by its order in writing, for such cause as may then seem to it, and be in law, good and sufficient, authorize said Company to charge fares in excess of those which were in effect September 30, 1918;

3. That so soon after the date of this order as may be reasonably practicable, and convenient, and in no event later than January 31st, 1919, said Company shall furnish to this Commission accurate and complete statements under oath, and in convenient form, setting forth the number of revenue and transfer passengers carried, and the number of car-miles operated, the cash receipts from operation and other sources, and the operating and other expenditures of the Company, all set forth in the manner prescribed by the rules of this Commission for accounting by street railway companies, for the calendar months of October, November and December, 1918, respectively; and thereafter, so soon as may be reasonably practicable and convenient after the end of each calendar month during the year 1919, and in no event later than the last day of the next succeeding calendar month, said Company shall furnish this Commission a complete statement as aforesaid covering the operation of the Company during the next preceding month;

4. That the right of the respondent Company to charge and collect the fares in this order prescribed shall be held subject at all times during the period covered by such order, or any extension thereof which may hereafter be granted as aforesaid, to the right and power of this Commission to reopen this case in the light of the facts disclosed by the monthly reports aforesaid, or of other facts otherwise coming to the attention of this Commission and modify the rates of fare by this order authorized to be charged and collected by the respondent Company;

And be it further ORDERED, that a copy of this order be forthwith served upon the proper officers of the respondent, the United Railways and Electric Company of

Baltimore, and that said Company, within ten days from the date of the service of such copy, advise this Commission in writing whether or not it will accept and abide by the same.

ALBERT G. TOWERS,
JNO. MILTON REIFSNIDER,
JAMES C. LEGG,
Commissioners.

(B)

CASE NO. 1682, OPINION FILED SEPTEMBER 30, 1919, AND ORDER NO. 5120.

PUBLIC SERVICE COMMISSION OF MARYLAND.

OPINION.

Before the Public Service Commission of Maryland.

Case No. 1682.

In the Matter of the Petition of The United Railways and Electric Company of Baltimore for a Modification of Certain Orders, Now in Force, Fixing the Rates of Fare to Be Charged by Said Company and for Permission to File, Publish and Put in Effect a New Schedule of Rates of Fare, Increasing Existing Rates, as Set Forth in This Petition.

Appearances:

Joseph C. France, Esq., and William H. Maltbie, Esq., representing the United Railways and Electric Company of Baltimore;

Joseph S. Goldsmith, Esq., People's Counsel, and

Osborne I. Yellott, Special Counsel, both representing the general public;

James J. McNamara, Esq., Counsel for the Federation of Labor;

S. S. Field, Esq., City Solicitor (by printed brief only), representing the Board of Estimates of Baltimore City.

By the Commission. Filed September 30th, 1919.

STATEMENT OF PROCEEDINGS.

On July 19th, 1918, The United Railways and Electric Company of Baltimore filed its application for an increased rate of fare from five to six cents and a uniform increase of one cent in the case of children between the ages of four and twelve years and the users of commutation books. In its petition the Company alleged in substance that by reason of war conditions it was no longer possible to render adequate service to the public at the existing rates of fare. It also expressly disclaimed any intention to establish by the proceeding any permanent rate of fare, stating that it asked for relief purely as a war emergency measure and during the period of war conditions, solely for the purpose of preserving its pre-war efficiency and to prevent, as far as possible, injury to its credit and to its organization and the deterioration of its plant, which would otherwise result. It further stated that "it is not intended that any part of the increased revenue hereby sought should increase the margin of profit which the Company had heretofore earned."

Subsequently, without waiting for the Commission to act upon this application, the Company, acting under Section 15 of the Public Service Commission Law filed its Schedule "P. S. C. Md. No. 8" effective October 1st, 1918, in which it provided for a flat increase of one cent in each of its existing adult, children and commutation fares.

On September 18th, 1918, the Commission, of its own motion, filed a complaint alleging that the proposed increases in fares as set forth in the above revised schedule were "excessive, unjust, unfair and unreasonable."

The Company's application of July 19th, 1918 (Case No. 1568), and the Commission's complaint (Case No. 1583) were subsequently consolidated and came to hearing November 18th, 1918. The hearing adjourned on that date until December 2nd, on which date the hearings were resumed and continued until December 19th.

On January 7th, 1919, the Commission filed its opinion in these two cases, the same being accompanied by its Order No. 4608 of that date prescribing a six-cent fare for the conveyance of each passenger over twelve years of age and four cents for each child between the ages of four and twelve years, with substantially equivalent increases in the case of other special and commutation rates.

By the express terms of Order No. 4608 the rates therein prescribed were to become effective from and after January 7th, 1919, and continue "until December 31st, 1919, and for no longer, unless such period be extended for a further period as hereinafter provided, or this order be earlier modified or abrogated by further order of this Commission." The order further provided in this connection, as follows:

> "2. That from and after the hour of midnight on the 31st day of December, 1919, said Company's right and privilege to charge and collect the increased fares herein authorized to be charged and collected shall cease and determine, and said Company shall thereafter be permitted to charge no fares in excess of those charged by it on September 30th, 1918, unless this Commission shall in the meantime, by its order in writing, for such cause as may then seem to it, and be in law, good and sufficient, authorize said Company to charge fares in excess of those which were in effect September 30th, 1918;
>
> "3. That so soon after the date of this order as may be reasonably practicable and convenient, and in no event later than January 31st, 1919, said Company shall furnish to this Commission accurate and complete statements under oath, and in convenient form, setting forth the number of revenue and transfer passengers carried, and the number of car-miles

operated, the cash receipts from operation and other sources, and the operating and other expenditures of the Company, all set forth in the manner prescribed by the rules of this Commission for accounting by street railway companies, for the calendar months of October, November and December, 1918, respectively; and thereafter, so soon as may be reasonably practicable and convenient after the end of such calendar month during the year 1919, and in no event later than the last day of the next succeeding calendar month, said Company shall furnish this Commission a complete statement as aforesaid covering the operations of the Company during the next preceding month;

"4. That the right of the respondent Company to charge and collect the fares in this order prescribed shall be held, subject at all times during the period covered by such order, or any extension Thereof which may hereafter be granted as aforesaid, to the right and power of this Commission to reopen this case in the light of the facts disclosed by the monthly reports, aforesaid, or of other facts otherwise coming to the attention of this Commission and modify the rates of fare by this order authorized to be charged and collected by the respondent Company."

Meanwhile the rates of fare prescribed in the Company's revised schedule "P. S. C. Md. No. 8" had become effective October 1st, 1918, as provided in such schedule.

On May 23rd, 1919, seven months and twenty-three days after the rates so prescribed became effective, and a little over seven months before the date set for their termination unless further extended by the Commission as provided in said Order No. 4608, the Company filed its petition alleging that while its passenger traffic had continued with no diminution since the cessation of hostilities in the early part of November, 1918, and its gross revenues had increased, nevertheless, by reason of its increased service at war wages and costs, and increased cost in operating expenses and maintenance, the Company since the first of October, 1918, when the additional

fare became effective, to April 1st, 1919, had accumulated a deficit of $167,088.90 as to its interest charges and a deficit of $619,894.90 as to its pre-war surplus and interest, and asked that the Commission's Order No. 4608 of January 7th, 1919, be modified to increase the base rate from six cents to six and one-fourth cents adult fare (four tickets for twenty-five cents or multiple thereof, when paid for in tickets), or seven cents for a single cash fare, with proportionate increase in all other rates except children's fares, which the Company suggested should remain unchanged.

This application came to be heard August 7th, 1919, the hearings and arguments consuming eighteen days and being concluded September 5th, 1919.

Meanwhile the Company had voluntarily entered into an agreement with its employees, under which agreement wages and salaries were materially increased, the Company's estimate of the aggregate of these increases being $805,524 per year. Inasmuch as the estimates both of the Company and of counsel representing the public had been prepared before this wage increase was made, and it was not practicable to redraft them at that late date, there was no official mention of such increase until near the conclusion of the hearings, when it was suggested that proper allowances be made therefor in the exhibits as originally prepared. The Company also filed additional exhibits based on the inclusion of such wage increases, and contended that an increase of fares from six to seven cents, with four tickets for twenty-five cents, would not suffice to enable it to render adequate service and meet its corporate requirements, including such wage increase, and that for these purposes a fare of ten cents would be required, with two tickets for fifteen cents. It was estimated by the Company's witness, Mr. John E. Zimmerman, of the firm of Day & Zimmerman of Philadelphia, that with the base rate at ten cents, from ninety to ninety-nine per cent. of the Company's patrons would use tickets at the reduced rate of seven and one-half cents each. Subsequently it was suggested that a base rate of eight cents, with tickets at the rate of seven and one-half cents, would produce substantially the same result and would be satisfactory to the Company.

On behalf of the public it was contended that with the introduction of proper and possible economies a base rate of seven cents, with four tickets for twenty-five cents, or six and a quarter cents each, would yield the Company a sufficient net operating income to enable it to render adequate service and at the same time meet all its corporate requirements. Representatives of the Federation of Labor contended that there should be no further increase over the existing base rate of six cents; and there were petitions filed in the case asking the Commission to reduce the base rate to the former rate of five cents.

At the date of the conclusion of the argument the Company's operating figures for the month of August, 1919, were not available, but have since been furnished the Commission. Inasmuch as they were furnished in compliance with Order No. 4608 above referred to, the figures for August will be used in this opinion along with the other figures and data which were given in evidence at the hearings. It is important to note in connection with these August figures that the wage increase above referred to became effective August 17th, 1919, and that the effect of such wage increase is therefore reflected in part in the figures for that month.

EFFECT OF FORMER INCREASE.

In its opinion in the Six-Cent Fare Case this Commission estimated that the one-cent increase provided for in its Order No. 4608 would yield the Company approximately $2,240,000 additional gross revenue.

It was shown in that case that the Company's average net earnings from 1912 to 1917, inclusive, after the payment of operating and maintenance expenses, depreciation allowances, taxes and fixed charges, had been $848,802, this sum having been available for dividends and surplus during that period.

It was also shown that in view solely of the higher wage scales prevailing at the date of our order, and without any regard whatever to the higher price of materials and supplies, the operations of the Company under the exist-

ing five-cent fare would result in a deficit of $2,163,057 for the ensuing year as compared with the above pre-war period.

The Commission concluded in that case that "if the respondent Company is to be put in a position to render adequate service to the people of this community, it must have a substantial increase in its revenues, and that the amount of such increase required in the immediate future is approximately the amount which may reasonably be anticipated to be yielded by the increase of one cent in practically all the Company's fares."

It will be noted that the Commission did not, in this opinion, commit itself absolutely to the proposition that the Company should be permitted, at all hazards, to increases in fares sufficient to yield its full and exact pre-war surplus. It is true, the computations were made upon that basis, but these computations took account only of increased labor costs, and ignored entirely increased costs of materials, the Company itself having elected this method of presenting its case, and having asked only for an increase of one cent in its fares to meet this additional expense of labor.

Notwithstanding the fact that for these reasons the six-cent fare was not designed to yield the Company its full pre-war surplus, it will nevertheless prove interesting and helpful to see how far this one-cent increase has fallen short of yielding such pre-war surplus during the eleven months from October 1st, 1918, to August 31st, 1919, the latest date for which operating figures are available.

The Commission's estimate in the former case that the increase in fare from five to six cents would yield the Company increased gross revenue of $2,240,000 during the year was upon the assumption that the Company would transport during that year 224,000,000 revenue passengers, this figure having been the estimate of the Commission's Special Counsel, and the Company's representatives having contended that such estimate was excessive.

The following table shows actual results as compared with such estimate:

TABLE I.

REVENUE PASSENGERS.

(Actual and Estimated)

1918	*Estimated.*	*Actual*
November	19,250,000	18,642,833
December	18,750,000	19,402,443
Total Bal. 1918	38,000,000	38,045,276
1919		
January	17,500,000	18,771,764
February	16,500,000	17,540,547
March	18,000,000	19,613,464
April	18,000,000	19,711,271
May	19,000,000	21,260,540
June	19,500,000	21,021,534
July	19,700,000	20,966,521
August	19,500,000	21,557,818
September	19,000,000	.....
October	19,500,000	.....
Total 10 mos. 1919	186,200,000	
" 12 "	224,200,000	

It will be noted that the actual number of revenue passengers carried by the Company since December 1st, 1918, have far exceeded the estimate adopted by the Commission in its opinion in the former case. This fact is unquestionably due to the more pronounced prosperity and business activity of the community following the cessation of hostilities than was anticipated by the Commission at the date of its opinion, a demonstrated fact which should not be lost sight of when we come later in this opinion to estimate upon the number of revenue passengers to be carried in the future.

The excess revenue passengers over the Commission's estimate resulted in a corresponding excess in the Company's gross receipts over the Commision's estimates.

But on the other hand the transportation of this greater number of passengers required the Company to operate its cars a greater number of car miles, this fact being directly reflected in the Company's operating expenses during the period.

The books of the Company show that since October 1st, 1918, the date when the existing rate became effective, the earnings of the Company, after the payment of operating expenses, taxes, depreciation allowance and fixed charges, have been materially less than they were during corresponding periods in the past. The balance remaining after the payment of the above items, including fixed charges, has been referred to in the exhibits and by the witnesses and counsel throughout the hearings as the "balance to surplus," and that phrase will be used with such meaning throughout this opinion.

The following table shows this "balance to surplus" by months since October 1st, 1918, and until August 31st, 1919, with figures showing revenue passengers and car-miles during this period, and the corresponding figures for each month during the preceding year for comparison:

TABLE II.

OPERATING RESULTS BY MONTHS UNDER NEW RATES.
(Compared with same months in preceding year)

	Revenue Passengers		*Car-Miles*		*Bal. to Surplus*	
	1917	1918	1917	1918	1917	1918
Oct.	18,499,163	16,649,510	2,874,178	2,578,092	$64,688	*$60,731
Nov.	17,517,946	18,642,833	2,748,368	2,738,459	20,347	*10,425
Dec.	17,848,006	19,402,443	2,624,763	2,927,161	47,076	*16,688
	1918	1919	1918	1919	1918	1919
Jan.	16,486,891	18,771,764	2,498,672	2,910,073	*18,665	*54,190
Feb.	15,586,460	17,540,547	2,296,109	2,686,216	*20,160	*50,077
March	18,462,512	19,613,464	2,681,786	2,928,263	63,603	25,023
April	18,772,227	19,711,271	2,638,216	2,871,591	40,547	30,175
May	20,472,092	21,260,540	2,842,175	3,051,285	111,654	83,720
June	20,243,356	21,021,534	2,780,732	2,987,337	99,731	63,575
July	20,830,858	20,966,521	2,917,713	3,092,077	48,465	44,392
Aug.	20,929,425	21,557,818	2,922,891	3,124,480	30,169	*13,043
Sept.	20,355,921	.....	2,747,900	.....	*72,205	.....

*Deficit in Balance to Surplus.

NOTE.—October, 1918, influenza epidemic.

The above table shows that during the eleven months the six-cent fare has been in force the Company has earned a net balance to surplus of about $41,731, as against $488,485 earned during the corresponding eleven

months beginning October 1, 1917, and as against the average of $848,802 during the entire years 1912 to 1917, inclusive.

During these eleven months the Company transported 215,138,245 revenue passengers, the additional revenue from whom, through the one-cent increase in fare, may roughly be estimated at $2,150,000. Without this additional revenue during these eleven months the Company would have sustained a deficit in operating and fixed charges of $2,108,269, on the basis of the above figures.

Its fixed charges during these eleven months were $2,916,411, so that it is clearly demonstrated that, without such increased fares granted by our Order No. 4608, the Company would have fallen $808,142 short of being able to pay the interest on its bonds and other interest-bearing obligations.

These facts do at least two things:

First, they demonstrate conclusively both the wisdom and reasonableness of the increase in fares granted by our Order No. 4608 of January 7th, 1919; and

Second, they demonstrate just as conclusively the utter unreasonableness, certainly at the present time, of the applications which we have received for an order requiring the restitution of the former five-cent base rate of fare.

THE COMPANY'S PRESENT NECESSITIES.

The above figures do not, however, necessarily in themselves, jutify the present application for an increase in the fares of the Company beyond the six-cent base rate established by our former order.

In the case now before us the Commission has had the benefit of much more elaborate and exhaustive studies of the operating results of the Company in the past and other relevant data than we had before us in the former case.

The exhibits containing this data included detailed studies of the Company's primary and sub-accounts, respectively, by years from 1912 to 1918, inclusive; of the

same by months from January 1st, 1916, to June 30th, 1919, supplemented by further more general statements of operating results for July and August, 1919, furnished as those figures became available; tables and charts showing the nature, extent and effect of increases in the cost of labor and materials; comparisons with the operating results of similar companies in other cities; elaborate estimates of probable future operating results, accompanied by voluminous supporting sheets and data; and much other information and data not within the above general classifications.

In addition to the above data, which was furnished principally by the Company, the Commission has had the benefit of independent estimates and supporting data prepared by People's Counsel Joseph S. Goldsmith, and of an elaborate typewritten analysis of the Company's books, and estimate of probable future operating results, prepared by Osborne I. Yellott, who was for five and a half years the Assistant General Counsel of the Commission, subsequently participated in the Six-Cent Fare Case, and was again employed by the State as Special Counsel to assist in the presentation of this case.

The Company's only witness was John E. Zimmermann of Day & Zimmermann. Mr. Zimmermann was on the stand under direct examination for six days, and under cross-examination for eight days.

While under direct examination, he filed a large number of exhibits dealing almost exclusively with the past earnings of the Company and its prospective earnings under existing and proposed rate up to December 31st, 1919, all these estimate ignoring the wage increase of $805,524 above referred to. Mr. Zimmermann's general plan in these estimates was to take the actual figures for the first six months of the calendar year 1919 and add to them his estimates for the remaining six months of that year, thus showing the balance to surplus as it would be during that calendar year if his estimates were correct, and also showing how far this balance to surplus would fall short of the balance to surplus earned by the Company during the year 1916. His estimates for the remaining six months in 1919 were based mainly upon actual car-mile costs during the first six months of 1919 applied to

his estimates of the car-miles which it would be necessary to operate in order to carry the number of passengers which he estimated would be carried during such six months.

The original estimates of Mr. Zimmerman, Mr. Goldsmith, and Mr. Yellott were all predicated upon the assumption that the six-cent fare would continue in force to the end of the year, that the amount of maintenance work would be proportionately the same as that done during the first six months of the year, that the proportion of car-miles operated to revenue passengers carried would remain substantially the same, and that there would be no increase in wages.

The estimates of Mr. Zimmerman, Mr. Goldsmith and Mr. Yellott, respectively, are shown in comparative form in the following table:

TABLE III.

COMPARATIVE ESTIMATES FOR 1919.

	Estimates for Year of 1919		
	Yellott	*Zimmermann*	*Goldsmith*
Revenue Passengers	240,000,000	240,777,100	244,620,000
Car-Miles	35,520,821	35,721,405	.....
Average Fare	5.897c	5.887c	5.887c
Passenger Revenue	$14,140,819	$14,174,548	$14,400,786
Other Operating Revenue	122,360	125,000	122,055
Total Operating Revenue	$14,263,179	$14,299,548	$14,522,841
Maintenance Ways and Structures	$885,559	$689,429	$682,356
Equipment	856,033	860,867	825,207
Power Plants, etc.	58,450	58,229	57,984
Total	$1,600,042	$1,608,525	$1,565,547
Operating Power	$985,392	$985,392	$989,445
Platform Labor-Pass. Service	3,735,211	3,736,297	3,738,354
Other Transpor. Expense	948,420	975,599	927,246
Traffic	17,896	21,701	25,152
Accidents and Damages	.....	644,324	544,278
General and Miscellaneous	1,212,243	700,474	706,584
Total	$6,899,162	$7,063,737	$6,931,059
Taxes	$1,410,839	$1,420,142	$1,510,323
Total Maint. Oper. and Taxes	$9,910,043	$10,092,454	$10,006,929
Balance	$4,353,136	$4,207,094	$4,515,912
Depreciation	713,598	717,609	514,248
Balance	$3,639,538	$3,489,485	$4,001,664
Non-operating Income	40,000	24,250	20,562
Total	$3,679,538	$3,513,735	$4,022,226
Fixed Charges	3,178,949	3,178,950	3,202,854
Balance to Surplus Before Income Tax	$500,589	$334,785	$819,372
1918 Federal Income Tax Paid in 1919	.....	86,221	.....
Balance	.....	$248,564	.....

Subsequently, Mr. Zimmerman introduced a number of additional exhibits through which he undertook to demonstrate the Company's necessity for greater allowances on account of maintenance, depreciation and accidents and damages than he had made in his original estimates, which were based mainly, as we have stated, upon actual expenditures during the first six months of 1919. Still later in the hearings he presented other exhibits designed to show the effect of the wage increases above referred to, his final exhibit (Company's Exhibit B) indicating the necessity for a ten-cents straight fare, with two tickets for fifteen cents, in order to yield a balance to surplus of $1,017,476 (a little less than the 1916 balance) after the allowance of the sum which he claimed would be necessary for the proper operation of the Company's system.

The cross-examination of Mr. Zimmerman developed the fact that the main differences between his estimates and those of counsel for the public were in respect to the following items:

1. Passenger Revenue;
2. Maintenance;
3. Depreciation allowance;
4. Accidents and Damages;
5. Federal Income Tax;
6. Proper balance to Surplus.

Both People's Counsel Goldsmith and Special Counsel Yellott, at the time of making up their respective original estimate, had before them the complete figures only up to the end of May, 1919, although they subsequently received from the Company a few days prior to the first day of the hearings the complete figures for the month of June. The operating figures for the month of July were not furnished them until the hearings were well under way. Under the Company's methods of accounting it is possible to furnish the traffic figures a day or two after the close of each month, but the revenue and expense figures cannot be shown until the books for the month have been closed, which usually takes from two to three weeks.

It goes almost without saying that in a case of this kind, where a new rate of fare has been in force for only

a comparatively short time, more satisfying estimates can be made as to probable future results from the figures covering a period of nine, ten or eleven months, respectively, than from the figures for shorter periods.

The Commission now has before it the full figures for the period from January 1st, 1912, to September 30th, 1918, while the old fare of five cents was in force, and for the further period of October 1st, 1918, to August 31st, 1919, covering the period the new six-cent rate has been in force.

In view of the fact that the estimates of counsel for the public were prepared before the figures after May 30th, 1919, were available, that Mr. Zimmermann's original estimates were prepared with only one more month's data at hand, and that many of the differences between the respective estimates are due to the fact that they were made upon the basis of incomplete and different data, the Commission has concluded that it is incumbent upon it to go through the painfully laborious task of making its own estimate of what would have been the probable operating results for the entire calendar year of 1919 upon the assumption that the six-cent fare had remained in effect throughout the entire year.

In making this analysis the Commission adopted the methods about to be stated, using the order in which the items are set up in Table III:

Revenue Passengers

The first step in estimating probable operating receipts and expenses is to determine the number of revenue passengers likely to be carried during the period under consideration. In this case the period under consideration is the calendar year 1919.

Mr. Yellott's estimate of the number of passengers likely to be carried during the year was 240,000,000. At the time of making this estimate he had before him the number of revenue passengers carried each year during the years 1912 to 1918, inclusive, and the number carried each month during the years 1916 to 1918, inclusive. He also had before him the figures showing the actual number of passengers carried during the first six months of

1919. Analyzing the above figures, he found that the average number of passengers carried during the first six month of 1916, 1917, and 1918 was 48.4 per cent. of the average for the entire year. Applying this percentage to the total for the first six months of 1919, he found that the number to be carried during the entire year upon this basis would be 243,634,535. He then applied the average percentage with each month bore to the entire year during the years 1916 to 1918, inclusive, and found that these figure ranged between 239,000,000 and 249,000,000, the average being 243,330,500 for the entire year. He also found that the January and February figures were abnormal, and, in order to be conservative, took the average indicated by the remaining four months in the first half of 1919, which was approximately 240,000,000 for the entire year.

Mr. Goldsmith took the number of revenue passengers actually carried during the months of March, April and May, 1919, and multiplied this by four, thus arriving at his estimate of 244,620,000.

Mr. Zimmermann had available the monthly figures for the entire period, 1912 to 1918, inclusive, but excluded the year 1918 for the reason that it was in some respects abnormal, especially with respect to the severe weather in January and February and the epidemic of influenza in October. He then ascertained the average percentage which the revenue passengers carried each month bore to the number carried during the whole year throughout the period 1912 to 1917, inclusive, and applied these percentages to the last six months of 1919, adding the result so obtained to the actual number carried during the first six months. This method resulted in his estimate of 240,777,100 for the year. Incidentally, Mr. Zimmermann's table of these percentages showed that from 1912 to 1917, inclusive, the Company had carried during the first eight months of each year an average of 65.991 per cent. of the number carried for the entire twelve months.

It will be noted that the methods adopted by Mr. Yellott and Mr. Zimmermann were strikingly similar, but inasmuch as the latter had available more data than the former, the Commission in making its estimate has adopted the method and figures used by Mr. Zimmer-

mann. In short, we have accepted Mr. Zimmermann's calculations that 65.991 per cent. of the passengers carried during the year, from 1912 to 1917, inclusive, were carried during the first eight months of the year, and have applied this percentage to the known figures for the first eight months of 1919, the result being an estimate of 243,129,-230 revenue passengers for the entire year 1919. In our estimate we have used the round figure 243,000,000.

Car-Miles

In estimating the number of car-miles necessary to be run in order to carry the number of revenue passengers which he had estimated would be carried during the last six months, Mr. Yellott first found that the number of revenue passengers carried per car-mile had increased gradually from 5.84 in 1912 to 6.96 in 1918, the average for the seven years being 6.25. He attributed this increase from year to year to growth in population, greater business activity, increase in riding habit, larger cars and improvements in distribution of cars. He then found that the average for the first six months of 1919 had been 6.75, as against 6.98 during the first six months of 1918, 6.29 during the firt six months of 1917, and 6.33 during the first six months of 1916. Under these circumstances he took the figure for the first six months of 1919, to wit, 6.75, rather than the higher figure of 1918. He then applied this figure to the number of revenue passengers estimated by him to be carried during the remainder of the year and finally reached his estimate of 35,520,821 car miles to be operated during the entire year.

Mr. Zimmermann's estimate of the number of revenue passengers to be carried per car-mile during the last six months of 1919 was 6.74, as against Mr. Yellott's estimate of 6.75.

Mr. Goldsmith made no independent estimate as to the number of passengers per car-mile or number of car-miles to be operated.

The Commission found that the number of revenue passengers carried per car-mile during the first eight months of 1919 was 6.7837. They then found that the number of car-miles operated during the first eight months of each year from 1912 to 1917, inclusive, averaged 66.954

per cent. of the number operated during the entire year. This percentage was applied to the 23,651,322 car-miles operated during the first eight month of 1919 and it was found that the total for the year would be 35,324,733, this figure being used in its subsequent estimate of operating costs. The use of this figure in our estimates results in the assumption that the Company will be able to carry an average of 6.879 revenue passengers per car-mile during the entire calendar year 1919, as against the average of 6.7837 carried during the first eight months of the year. This will require a somewhat better distribution of service than the Company has maintained in the past, but this is one of the efficiencies which this Commission has in mind the Company should adopt in the future. The exhibits show that the number of revenue passengers carried per car-mile during the last four months of the year is normally greater than the average for the first eight months.

Passenger Revenue

An estimate of the probable revenue to be derived from a given number of revenue passengers at a given rate of fare involves necesarily the ascertainment of the amount of revenue produced per revenue passenger by that rate of fare. Owing to the use of half fare, commutation books and special tickets, this average revenue per revenue passenger is never as great as the nominal fare itself.

Mr. Yellott found that the average rate of fare received by the Company with the five-cent base fare was in force was 4.865 cents. He estimated that since the six-cent fare had been in effect the average fare collected had been 5.897 cent, but at the time of making this estimate the figures for May and June were not available. Applying the above figures to his estimate of revenue passengers, he found that the passenger revenue would be $14,140,819.

At the time of testifying Mr. Zimmermann had the figures for the entire period October 1st, 1918, to July 31st, 1919, and found that during this period the average fare had been only 5.887 cents.

Applying the figure 5.887 cents to his total estimated revenue passengers, Mr. Zimmermann got the figure $14,174,548 as the probable passenger revenue during the year.

Mr. Goldsmith in his estimate took the actual passenger revenue for the months March, April and May, 1919, multiplied this by four and reached the figure $14,400,786 for the entire year.

Under these circumstances the Commission has used the Zimmermann figure of 5.887 cents, and applying the same to its estimate of revenue passengers for the year has reached the conclusion that the passenger revenue during the year will be $14,305,410.

Other Operating Revenue

There being less than $3,000 difference between the estimates of Mr. Zimmermann and either of the representatives of the public in the case of this item, the Commission has accepted the Zimmermann estimate of $125,000.

Maintenance and Depreciation

Reference to Table III will show that there was relatively little difference between the several estimates on account of maintenance in the original exhibits filed by Mr. Yellott, Mr. Zimmermann and Mr. Goldsmith, respectively, these exhibits having been as follows:

	Yellott	*Zimmermann*	*Goldsmith*
Maintenance Ways and Structures..	$685,559	$689,429	$682,356
Equipment	856,033	860,867	825,207
Power Plants, etc.	58,450	58,229	57,984
	$1,600,042	$1,608,525	$1,565,547

In the case of the depreciation allowance, Mr. Yellott estimated $713,598 and Mr. Zimmermann $717,609. Mr. Goldsmith's estimate was not an estimate of depreciation at all, but was accepted as the balance left over after the allowance of $819,372 balance to surplus, representing dividend payments made by the Company during the years 1913 to 1918, inclusive, although he pointed out that the resulting depreciation allowance of $514,248 was substantially equivalent to the average amount set aside on this account during those years.

Both Mr. Yellott and Mr. Zimmermann arrived at their

maintenance figures by using the car-mile costs during the first six months of 1919, the difference between them being due to the fact that they used different car-mile totals. This meant that both of them assumed in these estimates that no more maintenance would be done per car-mile during the latter half of 1919 than had been done during the first half.

During the course of his testimony, Mr. Zimmermann contended most earnestly that his estimate of $1,608,525 as the cost of maintenance during the year 1919 was much less than the Commission should allow in its final estimate on this account, and also that his estimate of $717,-609 (5 per cent. of etimated gross) in the case of depreciation was inadequate.

Mr. Zimmermann filed a number of special exhibits covering these points. In one series of these special exhibits he assumed that the actual maintenance work done during the year 1916 would furnish a fair criterion for the amount which should be done during the year 1919, and estimated that the cost of such amount of maintenance work at 1919 prices would be $1,919,496, as against his estimate of $1,608,525 based upon the actual amount of maintenance done during the first half of the year 1919. He contended in this connection that there should be a corresponding increase in the depreciation allowance from $717,609 to $1,140,717—in other words, a total allowance of $3,050,213 for maintenance and depreciation on the basis of 1916 quantities and 1919 prices, as against $2,326,134 on the basis of 1919 quantities and 1919 prices, a difference of $726,079, which would amount to about one-third of a cent additional in the way of fare.

In another series of exhibits—and, in fact, this was his final recommendation and conclusion—Mr. Zimmermann contended that the Company should be given an allowance of nine cents per car-mile for maintenance and three cents per car-mile for depreciation, an estimated total of $4,286,568, against his other total of $2,326,134 based on 1919 quantities and 1919 prices, an increased allowance on this account of $1,960,434, or almost a full cent additional fare.

It is a universally accepted principle of rate-making

that the proprietors of a public utility are entitled to receive from the public through the rates a sum not only sufficient to pay operating expenses, taxes and fair return upon the fair value of the property used in the public service, but in addition thereto a sum sufficient to maintain such property in repair, and replace such portions of the same as may be worn out in the public service or have to be replaced from time to time for other reasons incident to their use in such service.

There is probably no one subject in connection with rate-making that has been more discussed than this general subject of maintenance and depreciation, and the difficulties of the subject to those who attempt to approach it along technical or theoretical lines are innumerable. The Supreme Court of the United States has never attempted any full discussion of the subject which could safely be taken as a guide to rate-making bodies.

For these and other reasons, this Commission has always endeavored to approach the question in a practical as distinguished from a theoretical way, and in all the cases which have come before it has attempted to provide in the rate a sum in dollars which will be adequate to maintain the property in reasonably good operating condition, and to provide in addition a fund out of which current replacements can be made promptly as required from time to time, without undue or abnormal enhancement in the cost of current maintenance.

The Commission sees little, if any, ground for any substantial distinction, so far as the public is concerned, between the cost of maintaining in good repair individual articles used in the public service, and replacing such articles when they are actually worn out and have to be retired from service. In either event the public should in fairness pay the bill, and it is a matter of no real concern to the public whether the bill is made out for maintenance or for replacements.

The public is, however, interested in replacements being promptly made, when and as required. It is also interested in the proper and equitable apportionment of the cost of the article replaced among those who have had the benefit of its service during its useful life. The

public is also interested to a considerable extent, and the utilities and regulatory bodies to an even greater extent, in the continued maintenance of an existing charge for service, as distinguished from charges which are constantly fluctuating up or down. And it is to accomplish the first two of these ends, to wit, prompt replacement as required and equitable apportionment of the cost of the article replaced among those who have enjoyed its service—and to prevent the second, to wit, frequently fluctuating rates for service—that depreciation and kindred reserves are created. It therefore follows that it is just as much incumbent upon the general public to pay through th rates sums sufficient for adequate depreciation reserves as it is to pay the cost of actual maintenance.

But, on the other hand, there is a correlative duty and obligation on the part of those who have dedicated their property to the public service to keep such property always in such a condition of repair as to render adequate service to the public. One who has devoted his property to the public service cannot, certainly under the law of this State, withdraw the entire property or any considerable portion of the same from the public service without the express consent of the State. And what he cannot do in gross, he cannot lawfully do by piecemeal.

In short, no public service corporation, or individual engaged in the public service, has the right, without the consent of the State, to dispose of the property dedicated to the public service and divert the proceeds thereof to the payment of dividends. And the same principle forbids the public service corporation neglecting properly to maintain its property out of the fund contributed by the public through the rates paid for the service, and use those funds for the payment of dividends. So to do is in effect to consume in the payment of dividends property which has been dedicated to the public service and in which the public has acquired a material interest by virtue of such dedication.

That the petitioning company has not kept up the maintenance of its property during the past several years to the extent to which it should properly have been kept up is a matter of common knowledge, and was

frankly admitted by the Company's principal witness at the hearing. Some justification for this state of affairs was sought in the fact that owing to war conditions during this priod it was not possible to keep up the maintenance of the property as well as it should have been kept up. This fact, coupled with the further fact that the operating officials of the Company no doubt felt that the prices of labor and materials were abnormally high during this period, and that true economy demanded that this maintenance be deferred, may be some justification for the Company's conduct in deferring the same to the extent that it did.

But these facts, while possibly justifying the deferring of maintenance itself, cannot be taken to justify the Company's action in neglecting to provide for such deferred maintenance during the period it was so accruing. As was pointed out so frequently at the hearings by all the counsel representing the public in this case, the Company continued throughout the entire war period to pay dividends upon is common stock at the accustomed rate of four per cent. per annum, and not only made absolutely no provision for taking care of the deferred maintenance accruing during this period, but almost entirely exhausted the depreciation reserves which it had so slowly set up in the past.

Under these circumstances this Commission feels that it would be grossly unfair to the public of today and of the immediate future to provide in the rates about to be established the large sums necessary either to pay for the deferred maintenance accruing during the period of the war, or to set up depreciation reserves which could have been so easily set up had dividends upon the common stock not been paid during the period of the war.

It is questionable under the law of this State, as declared by the Court of Appeals in the *Havre de Grace and Perryville Bridge Company* case, 132 Md., 16, whether this Commission has the power under the Public Service Commission Law to require a public service corporation, against the judgment of its directors, to set up any specific depreciation reserves, or has the power and authority to control the disposition of that reserve. But, regardless of the extent of its power in this connec-

tion, this Commission has considerable latitude in the first instance, at least, in establishing rates to be charged by public service corporations subject to its jurisdiction, and in respect to this matter can properly be guided to a considerable extent by the provisions which it finds such corporations have made both for the current maintenance of their properties and for the prompt replacement of those portions of the same which may require to be replaced from time to time for any reason. More liberal allowances for maintenance and replacement will naturally be made by this Commission in cases where it finds proper and adequate provisions are made by the owners of the property for the maintenance and replacement thereof than in cases where it finds a tendency to consume their property in the payment of unwarranted dividends.

Mr. Zimmermann contended in effect that the actual amount of maintenance done by the Company during the first half of the year 1919 was materially less than the actual amount done during the first half of the year 1916, although the aggregate cost of such maintenance in the first half of the year 1919 was greater than its aggregate cost in the first half of 1916 by reason of the much higher cost of labor and material at the present time. As we have stated, in a number of his exhibits he sets up these 1916 quantities of maintenance and 1919 prices, and his other estimates based upon nine cents per car-mile for maintenance and three cents per car-mile for depreciation allowances were only finally adopted by him at the very conclusion of his testimony on cross-examination.

The exhibits in the case show that during the years 1912 to 1918, inclusive, expenditures were made as follows on account of total maintenance and the depreciation reserve:

Year	*Total Maintenance*	*Depreciation Allowances*	*Total*
1912.....	$847,075	$428,574	$1,275,649
1913.....	877,309	530,226	1,407,535
1914.....	811,724	469,395	1,281,119
1915.....	719,279	410,548	1,129,827
1916.....	834,116	495,702	1,329,818
1917.....	923,641	528,042	1,451,683
1918.....	1,300,879	596,485	1,897,364

It will be seen from these figures that the amount expended for maintenance during the year 1916 was considerably above the average spent during the preceding years, also that the appropriation to depreciation was larger in 1916 than it had been during any of the preceding four years, with the exception of 1913, and was considerably above the average for the four years.

Under these circumstances we are constrained to adopt Mr. Zimmermann's view that the appropriations on account of maintenance and depreciation in 1916 fairly represented the Company's conception of the amounts proper to be devoted to these purposes, especially in view of the fact that the year 1916 ended with a balance to surplus of approximately $300,000 more than the Company had earned during any of the four preceding years, and that year was regarded as the most prosperous in its history. It is fair to assume under these circumstances that if the managing officers of the Company had conceived that more money was required for maintenance or depreciation during the year 1916 it would have been expended.

The actual amount of the Company's property subject to depreciation is not materially greater at the present time than it was in 1916. Therefore the only factor to be reckoned with is the increased cost of labor and materials at the present time over their cost during the year 1916.

Mr. Zimmermann filed a number of exhibits dealing with the increased cost of labor and material at the present time, some of these exhibits going as far back as 1893. In these exhibits it appeared that the 1919 costs of maintenance, labor and material included, were approximately 101 per cent. in excess of the 1916 costs.

Resorting to the exhibits showing the monthly expenditures on various accounts during the year 1916, we find that the average maintenance expenditures per month for the first seven months of that year were $66,039. During the first seven months in 1919 we find the average maintenance expenditures per month were $133,558, an increase of a trifle over 102 per cent., this fact indicating that practically as much maintenance, in

quantity, was done during the first seven months of 1919 as during the first seven months of 1916.

Going further, we find that the amount spent for maintenance in August, 1916, was $75,509, whereas the amount spent for maintenance in August, 1919, was $196,826, an increase of 106.6 per cent., this larger increase in the percentage being no doubt due in part to the wage increase of August 16th, 1919.

It is somewhat difficult to reconcile Mr. Zimmermann's contention that the proper allowance for maintenance at the present time would be nine cents per car-mile with the fact that during the year 1916, when the Company did all the maintenance work which it evidently thought necessary, such cost was at the rate of but 2.66 per car-mile.

It is evident from the above figures as to the actual expenditures for maintenance during the first seven months of the years 1916 and 1919, respectively, if we accept Mr. Zimmermann's assumption that the costs of maintenance, labor and material have advanced approximately 101 per cent., that the Company has done substantially as much maintenance work during the first seven months of 1919 as it did during the first eleven months of 1916.

The car-mile cost of maintenance during the first seven months of 1919 was 4.55 cents. Applying this figure to the 14,797,891 car-miles estimated by us to be operated during the last five months of the year, we get the sum $647,043 to be added to $934,910, the actual cost of maintenance during the first seven months, this addition resulting in a total of $1,608,053 as the estimate of the probable cost of maintenance during the entire calendar year 1919.

Or, if we take the actual maintenance cost in 1916 and increase it by 101 per cent., we get the sum of $1,676,537 as the probable cost of maintenance during the entire year 1919.

Under all the circumstances we have concluded to adopt this latter figure as our estimate.

In the case of depreciation allowances to maintain the Company's depreciation reserve, the same being referred to in the exhibits as "depreciation," the Company during the past few years has been accustomed to make these allowances in per cent. of gross, the usual allowance being five per cent. of gross. While this may be a convenient method of computing proper allowances for depreciation in cases where charges for service run along regularly the same from year to year, it must be very evident that there is little or no logic in its use where such charges fluctuate from time to time. Certain it is that this Company's depreciable property did not begin to depreciate twenty per cent. more rapidly overnight between September 30th, 1918, and October 1st, 1918, when the five-cent fare was increased to six cents, and the Company's gross revenues increased overnight proportionately.

As we have said in an earlier portion of our discussion of the subject of maintenance and depreciation, this Commission's aim is always to meet this subject in a practical way. Ordinarily depreciation allowances are expressed in percentages of the value of the depreciable property, or equated over the Commission's valuation of the whole. But in this case the valuation of the Company's property has never been completed, and we are therefore without that guide. Common sense and a knowledge of the purposes and objects of a depreciation reserve seem to dedicate that by reason of the enhanced costs at the present time, depreciation allowances, when expressed in dollars, and even where there has been no material increase in quantities, should be materially larger than in the past. There would also seem to be some relation between the car-miles operated and the amount set aside from year to year to provide for replacements.

Under the circumstances we have determined, not for the purpose or with the object of establishing a precedent, but with the idea of reaching an amount which will be reasonable under the circumstances of this particular case, to base our estimate of depreciation allowances for the last four months of the year 1919 upon the car-mile ratio to such actual allowances during the

first eight months of 1919 These allowances during the first eight months of 1919 amounted to $475,734, or 2.01 cents per car-mile. Upon this basis our estimate for the depreciation allowances for the last four months of the year is $234,636, which, added to the above $475,735, makes $710,370.

The allowances in the past have been as follows:

1912	$428,574
1913	530,226
1914	469,395
1915	410,548
1916	495,702
1917	528,042
1918	596,485

Operating Power Plant

Mr. Zimmermann in his estimate accepted June, 1919, as fairly representing the car-mile cost of power plant operation at the present time. We have taken the actual cost for the first six months of 1919 and estimated the cost for the remaining six months by multiplying the June cost per car-mile, 2.49 cents, by the car-miles estimated to be run during the last six months, out total being $975,516, as against Mr. Zimmermann's and Mr. Yellott's estimates of $985,392 and Mr. Goldsmith's estimate of $989,445.

Platform Labor

Mr. Zimmermann in this case took the car-mile cost of platform labor for the first six months of 1919 and multiplied it by his estimate of car-miles to be run during the remainder of the year, adding the actual and estimated, and getting $3,736,297. Mr. Yellott took the car-mile cost for the ten months, September, 1918, to June, 1919, inclusive, and in other respects following the same course as Mr. Zimmermann, estimated the cost for the year at $3,735,211. Mr. Goldsmith took the actual amount paid for platform labor during March, April and May, 1919, multiplied this sum by four, and got the figure $3,738,354.

The Commission has taken the average car-mile cost for the first seven months of 1919 and multiplied this by

its estimated car-miles for the last five months, the total of actual and estimated being $3,701,102.

Other Conducting Transportation

The same methods were followed by the several parties in estimating the cost of this item as they followed respectively in estimating the cost of platform labor, with the result that the Commission's estimate is $959,391, as against Mr. Yellott's estimate of $948,420, Mr. Zimmermann's estimate of $975,599 and Mr. Goldsmith's estimate of $927,246.

Traffic

Owing to the particular nature of the items embraced in this account, Mr. Yellott concluded that it was not properly susceptible of computation or a car-mile basis, the same embracing advertising, net cost of parks, etc., and estimated that the cost for the year would be $17,896. Mr. Zimmermann's estimate was based on the car-mile cost for the first six months and amounted to $21,701. Mr. Goldsmith's estimate was based on actual results for March, April and May, 1919, multiplied by four, and amounted to $25,152.

The Commission had the benefit of the July and August figures and found that there was a net profit from the parks during these two months which resulted in a credit item overbalancing the debits for the year. It was nevertheless necessary to estimate the probable cost during the remainder of the year, and this was done by taking the actual cost for the first six months, reducing the same to a car-mile basis, multiplying this by the estimated car-miles for the last four months, adding actual and estimated, and deducting the July and August credit items, leaving a net expense for the year of $1,086.

Accidents and Damages

In this case both Mr. Yellott and Mr. Goldsmith based their estimates upon the figures in the exhibits furnished them, which showed actual appropriations to the accident reserves instead of actual expenditures during the first six months. This error was corrected by Mr. Zim-

mermann in his exhibits and testimony, and he also contended that there should properly be an addition of $110,000 to the accident reserves for the current year. The Commission has accepted the Zimmermann estimate of $644,324.

General and Miscellaneous.

In this case Mr. Yellott adopted the car-mile basis from October 1st, 1918, to June 30th, 1919; Mr. Zimmermann the car-mile basis for the first six months of 1919, and Mr. Goldsmith the actual payments during March, April and May, 1919, multiplied by four.

The Commission has adopted the car-mile costs for the first seven months of 1919 as the basis for the remaining five months and has combined actual and estimated, with the result that its estimate for the year is $705,077.

Taxes (Except Federal Income Tax)

In this case Mr. Yellott estimated each class of tax separately, Mr. Zimmermann applied the car-mile basis for the first six months of 1919, and Mr. Goldsmith used the actual payments for March, April and May, 1919, multiplied by four.

The Commission took the first six months of actual cost of all items except park tax and Federal income tax, multiplied such actual by two for the year, estimated the park tax on the basis of 6.91 per cent. of its total actual and estimated passenger revenue for the year, getting a total of $1,394,370, exclusive of Federal income tax.

Non-Operating Income

Mr. Zimmermann estimated this on the basis of car-mile receipts for the first six months, applying this basis to estimated car-miles during the remaining six months and adding the totals of actual and estimated. The Commission followed the same course, except that it took the car-mile basis for the first eight months, and arrived at the result $22,475, which is almost the exact result which would have been obtained by considering the actual for the first eight months as two-thirds of the year and computing the entire year upon that basis.

Fixed Charges

In this case both Mr. Yellott and Mr. Zimmerman took the actual fixed charges for the first six months of 1919 and multiplied this sum by two to get the fixed charges for the year. Mr. Goldsmith took the fixed charges for March, April and May, 1919, multiplied this amount by four and got a somewhat higher sum. The Commission adopted the method pursued by Mr. Yellott and Mr. Zimmermann, and its estimate of this item for the year is $3,178,950.

1918 *Federal Income Tax*

The amount of this tax was $86,221. Mr. Zimmermann originally included it in his estimate, but subsequently deducted it to make his estimate comparable with the others, reserving the question for further consideration. The Commission approved this course, thinking it better to reserve the question until the 1919 estimate net income and consequent Federal income tax on that year's receipts have been determined.

The results of the aforegoing computations of the Commission are shown in the following table:

TABLE V.

COMMISSION'S ESTIMATED INCOME STATEMENT.

For Calendar Year 1919

	Amount	*Per Cent. of Gross*	*Per Car-Mile*
Car-Miles	35,324,733		
Revenue Passengers	243,000,000		
Average Fare	5.887c		
Passenger Revenue	$14,305,410	99.1338	40.4969c
Other Operating Rev.	125,000	.8662	.3538
Total	$14,430,410	100.0000	40.8507
Maint. Way and Structure			
Maint. Equipment			
Maint. Power Plant			
Total Maintenance	$1,676,573	11.6183	4.7462
Oper. Power Plants, Etc.	$975,515	6.7602	2.7616
Platform Labor	3,701,102	25.6477	10.4773
Other Trans. Expense	959,391	6.6485	2.7159
Traffic	1,086	.0075	.0031
Accidents and Damages	644,324	4.4651	1.8240
General and Misc.	705,077	4.8861	1.9960
Total Operating	$6,986,495	48.4151	19.7779
Taxes (except Fed. Inc. Tax)	$1,394,370	9.6627	3.9473
Total Oper. Main. and Taxes	$10,057,438	69.6961	28.4714
Balance	$4,372,972	30.3039	12.3793
Depreciation	710,370	4.9227	2.0109
Balance	$3,662,602	25.3812	10.3684
Non-Operating Income	22,475	.1557	.0636
Total	$3,685,077	25.5369	10.4320
Fixed Charges	3,178,950	22.0295	8.9992
Balance to Surplus	$506,127	3.5074	1.4328

The Wage Increase of August 17th, 1919.

Company's Exhibit No. 13 F-1 shows the effect of the principal wage increases of August 17th, 1919, as follows:

TABLE V.

PRINCIPAL WAGE INCREASES AUGUST 17, 1919.

Platform Employees—First 3 mos.	.41 hour	.45 hour
Next 9 mos.	.43 "	.48 "
Thereafter	.45 "	.50 "
Line Superintendence	$180.00 mo.	$200.00 mo.
Dispatcher	5.50 day	6.00 day
Car Cleaners (Male)	3.00 "	3.30 "
Street Inspectors	170.00 mo.	185.00 mo.
First-class Mechanics	5.00 day	6.00 day
Shop Foremen	200.00 mo.	230.00 mo.
Fireman	5.30 day	5.80 day
Watch Engineers	5.30 "	6.00 "
Electrical Operators	5.60 "	6.15 "
Sub-station Operators	5.50 "	6.00 "
Linemen	5.00 "	5.50 "
Asst. Engineers	200.00 mo.	225.00 mo.
Pavers	5.00 day	5.50 day
Rammers	3.75 "	4.15 "
Laborers	3.50 "	4.00 "
Construction Supervisors	150.00 mo.	165.00 mo.
General Office and Mis. Employees		Approx. 10% inc.

Company Exhibit No. 13 F purports to show the estimated cost of the above wage increase based on hours of labor for the preceding twelve months, as follows::

TABLE VI.

ESTIMATED COST OF WAGE INCREASE OF AUGUST 17, 1919.

Class of Employee	*Total Days*	*Amount*
Conductors and Motormen	834,694	$399,748
Other Transportation Employees	110,511	45,977
Car House Employees	68,447	54,305
Shop Employees	155,748	121,518
Power Employees	102,727	46,696
Roadway Employees	183,892	98,357
General Office and Miscellaneous Employees	84,658	38,923
Total	1,540,677	$805,524

There was no effort upon the part of counsel for the public to attack or impeach the above estimates, and as the Commission has no reason to believe the same are not accurate, it will adopt the amount of $805,524 as the cost of such increase.

In doing so, however, we are not unmindful of the evidence in the case to the effect that certain of the above classes of labor were notoriously inefficient during a large portion of the period used as the basis of such estimate, and that there is good reason to hope that greater efficiency in the case of such classes of labor will be brought about in the near future.

While we use the above figure, therefore, for the purpose of our final calculations, it is so used with this reservation.

Balance to Surplus

Table IV shows that the Commission's estimated balance to surplus on the basis of the wages scales in effect prior to August 17th, 1919, was $506,127. From this balance to surplus the cost of the wage increase for the remainder of the year should properly be deducted in order to determine the true 1919 balance to surplus.

We will assume for our present purposes that the effect of the continuance of this wage increase for the four and a half months from August 17th to December 31st would be to increase the expenses of the Company four and one-half twelfths the total increase, $805,524, or $302,071.

This amount deducted from our balance to surplus of $506,127, per Table V, would leave a true balance of $204,056 for the current year.

The following table shows the balance to surplus by years from 1912 to 1918, inclusive::

TABLE VII.

BALANCE TO SURPLUS BY YEARS.

Year	*Balance to Surplus*	*Cumulative Average*
1912.....	$678,042	
1913.....	792,322	$735,182
1914.....	819,368	763,244
1915.....	819,368	777,275
1916.....	1,108,124	843,445
1917.....	875,587	848,802
1918.....	332,652	775,066

Reference to an early portion of this opinion, or to our opinion in the Six-Cent Fare Case, will show that in that case we established the period 1912 to 1917, inclusive, as the pre-war period, and the pre-war surplus as $848,802.

Deducting the above $204,056 from such pre-war surplus of $848,802, we find that by following this method of computation there would be at the end of the year a deficit of $644,746 under the pre-war surplus.

To have required all the revenue passengers since August 17th, 1919, up to December 31st, 1919, to make up this deficit would have required an increase in the fare of approximately seven-tenths of one cent, or to require those using the cars after October 1st and until December 31st to make up the same would require an increase in the fare over one cent.

It is not possible, of course, at this date for the Commission to pass an order which would require patrons who have used the cars in the past to pay the Company the balance of the fares which they should have paid in order to render the Company adequate compensation for the service rendered, and whatever may be the justice of the Company's contention that our order now should provide compensation for the losses sustained since the date of the filing of the petition for an increase in fares, the Commission feels that the ends of justice can best be subserved by projecting the estimates

for 1919 into the year 1920 and assuming that the estimates for the year January 1st, 1919, to December 31st, 1919, would apply equally well to the year October 1st, 1919, to September 30th, 1920.

There are no such evidences at the present time of prospective reductions in the cost of labor or materials as to justify this Commission in predicating the relief to be granted the Company upon the assumption that there will be such reductions. We will therefore assume that our estimated balance to surplus of $506,127 is the balance to surplus which the Company would have earned during the year October 1st, 1919, to September 30th, 1920, had there not been the wage increase of August 17th, 1919.

Special Counsel Yellott in his argument at the conclusion of the case laid particular stress upon the fact that both his and Mr. Zimmermann's estimates were based upon actual figures for the first six months of 1919, the estimated figures for the last six months having been predicated largely upon unit costs during that period, and that consequently any projection of these estimates beyond December 31st, 1919, would have to be upon the assumption that operating results would be no more efficient and conditions generally no better from the standpoint of the Company than they had been during the first six months of 1919.

The Commission thinks this point is well taken, and feels that it is but reasonable to assume that many of the unfavorable operating conditions which existed during the latter part of 1918 and the first half of 1919 will not continue on in full force and effect into any considerable period in the future. It is, however, impossible for this Commission to estimate in terms of dollars and cents the effect of this anticipated improvement in operating conditions, just as it is impossible for the Commission to foretell with any degree of accuracy whether or not there may arise other conditions in the future which will affect the Company adversely. About all we can do under the circumstances is to assume, and we think we are justified in so assuming, that operating conditions in many of the respects referred to by both the People's Counsel and Special Counsel in

their arguments, and during their cross-examination of Mr. Zimmermann, will not be as unfavorable to the Company as they were during the latter part of 1918 and the first half of 1919. This assumption has had some weight with this Commission in reaching its conclusions in this case, but, as we have said, is not one which can be reduced even approximately to figures.

We are therefore deducting our estimated balance to surplus of $506,127 from the $805,524 wage increase, and conclude that with such wage increase in effect the Company will earn during the year October 1st, 1919, to September 30th, 1920, $299,397 less than the amount necessary to pay its interest charges in full unless greater revenues are given it through an immediate increase in fares.

In the former case, as we have hereinbefore stated, this Commission did not commit itself absolutely to the proposition that the Company should be permitted at all hazards to charge fares which would enable it to earn its pre-war surplus, although we permitted an increase in fares designed to accomplish substantially that result.

Our hesitancy to commit outselves absolutely upon this point in our previous opinion and order was due largely to the fact that we hoped and rather expected that with the resumption of peace there would come about a general and fairly rapid reduction in the prices of labor and commodities which would prove the continuance of the increased fare authorized in that case to be unnecessary.

At the present time we see no evidence of any such general reduction in the prices of either labor or commodities, although it is true that there are some few commodities which have recently fallen in price. These are, however, the exceptions rather than the rule.

For these and other reasons the Commission feels it would be unwise, misleading and inexpedient to continue the fixing of rates for our public utilities upon the basis of a war emergency.

At the same time we feel that conditions today are so

far from normal that it would be unwise for the present for us to revert to the former method of fixing rates solely upon the basis of valuation.

Rates for service in the case of public utilities are ordinarily fixed in the hope that they will continue in force without change for long periods of time. Realizing as we do that present costs are abnormal, that they are not likely for many years, if at all, to return to their former or pre-war level, and that they will ultimately find their new post-war level, which will probably be higher than the pre-war level but lower than the present day abnormal cost, the Commission is of the opinion that in this interim of social unrest and business uncertainty some better and more satisfactory basis of fixing rates for the period of such unrest should be found than either war emergency or valuation.

Heretofore, in this Commission's decisions and orders in the two recent cases of the Consolidated Gas Electric Light and Power Company, to wit, the Electric Rate case and the Gas Rate case, and to a very considerable extent in our former order in the United Railways & Electric Company Six-Cent Fare case, we have been largely governed in reaching our conclusion by the existing corporate requirements of the several companies under the peculiar circumstances existing at the time of our order.

In short, we have felt in all these cases that the best interests of the public of this city and State peremptorily demanded that these corporations be permitted to charge rates for their services which would yield them revenues sufficient both to enable them to render the public adequate service for the present and to maintain their properties and affairs in a condition to continue to render the public such adequate service until such time in the future as conditions can fairly be considered to have become normal. When that time comes, it will be time enough to adopt methods which will result in greater permanency of rates.

It is true that this principle furnishes no standard by which relief can be given to other public utilities operating under somewhat similar conditions, but whose corporate requirements are materially different from those

of the corporation in the case of which such principle may have been applied. For illustration, the corporate requirements of a public utility having a large bonded indebtedness at a high rate of interest might well be materially greater than the corporate requirements of another utility having a relatively small funded debt in comparison with the actual value of its property and paying a correspondingly low rate of interest.

And this Commision would not for a moment contend, nor does it admit, that a proper application of the above principle would necesarily require the allowance of a larger relative balance to surplus in the case of a former company than in the case of the latter, regardless of all other circumstances.

The fixing of rates of charge for the service of public utilities is essentially a business problem, and, as was so tersely said by Mr. Justice Hughes of the Supreme Court of the United States in the Minnesota Rate Cases, is not a matter of formulas. This same proposition has repeatedly been stated by the Supreme Court in other ways.

For instance, it has been held that regulatory bodies in making their valuations of property used in the public service for the purpose of fixing rates must use their best judgment in the endeavor to arrive at a valuation which will be just and fair as between the public and the owners of the property under all the facts and circumstances of the particular case.

Again it has been held that there is no standard rate of return upon investment which should be allowed by regulatory bodies under any and all conditions, but that the proper rate of return to be allowed in any given case is the rate which would be fair and just as between the public and the owners under the circumstances of that particular case.

Likewise it has been held that in prescribing the charges to be made by the utility for its service, those charges shall not follow any set standard, but shall be such as are just and fair as between the public and the owners under all the facts and circumstances of the particular case.

Thus we see that at every stage of rate-making the regulatory body is expected to use its best judgment and discretion in the premises and render judgments which will be based in large part at least upon the facts and circumstances of the particular cases before them.

In short, we must take each case as we find it, and endeavor to adopt that form and measure of relief which we think best adapted to the circumstances of that particular case.

In the course of our opinion in the Six-Cent Fare case this Commission said as to the United Railways & Electric Company of Baltimore:

> "In the course of a relatively few years the street railway has become one of the most important adjuncts to life in all thickly populated communities. With water, gas and electricity, it has become one of the prime necessities of life. Without it, business would come almost to a standstill, and social life in our cities and suburban communities would be most radically changed. So dependent have the people of our cities become upon the street railway that an interruption of only an hour or so in the service is almost instantly felt throughout the length and breadth of the community, and continuous bad or inadequate service is a thing which no community will long tolerate if redress of any kind can be found.
>
> "From the above reasons it follows that the prime obligation which any State regulatory body, such as a public service commission, owes to the public in connection with the property and affairs of a street railway corporation is, first, to see that the property of such corporation is at all times so constructed, equipped and maintained as to enable those in charge of the same to render at all times adequate service to the public, and, second, to see that such character of service is at all times rendered.
>
> "The former proposition required that the Company shall at all times be kept in such a condition, financially, that it can command investments in its property by the investing public, in order that necessary extensions to meet the demands of a rapidly

growing community may be made promptly when and as required, and that its road-bed, power-houses and equipment may always be of a type and capacity to render adequate service economically and efficiently. There is no statutory law which can be resorted to in order to compel the investing public to invest its money in a public utility rather than in any other class of enterprise, and the only laws which can be appealed to are the natural laws of trade and commerce which lead men to invest their money where it may reasonably be expected to yield them a fair return for its use, and forbid the investment of money where there is no reasonable hope or expectation of such a return.

* * * * * *

"Consequently it follows that a State regulatory body could do no greater harm to a community so entirely dependent upon the service of a street railway company as the public of Baltimore is dependent upon the service of the respondent Company than to refuse to permit it to charge such rates for its service as will enable it at all times both to command the investment of money necessary for the making of required extensions and continued maintenance of its property in efficient condition, and also to render such character of service as the needs of the community reasonably require. So to refuse would not only be to render it physically impossible for the Company to render adequate service, but would also be to drive the Company itself into a position of pecuniary decrepitude which would in the end result in bankruptcy and dissolution, after a long-drawn-out period of such inadequate service, during which the property and equipment would fall into a condition of disrepair which could only be corrected after the lapse of many years and the expenditure of many millions of dollars."

The exhibits in this case show that the petitioning Company had outstanding June 30th, 1919, net funded securities amounting to $64,762,000, and our estimates show that the Company's fixed charges amount at the present time to $3,178,950, the great bulk of this amount

being made up of interest charges on the above funded securities.

The exhibits in this case show that the petitioning Company had outstanding June 30th, 1919, net funded securities amounting to $64,762,000, and our estimates show that the Company's fixed charges amount at the present time to $3,178,950, the great bulk of this amount being made up of interest charges on the above funded securities.

The exhibits also show that on June 1st, 1922, there will be due $3,000,000 of the City & Suburban Railway First Mortgage Five per Cent. underlying bonds; that on November 1st, 1929, there will be due $1,500,000 of the Baltimore Traction Company First Mortgage Five per Cent. bonds; that on October 1st, 1931, there will be due $4,946,000 Maryland Electric Railways First Mortgage Five per Cent. bonds, guaranteed by the petitioning Company, $823,000 of these bonds now being in the treasury of said Company; that on March 1st, 1932, there will be due $600,000 of the Central Railway Extension and Improvement Five per Cent. mortgage bonds, and on May 1st, 1932, $700,000 of said Central Railway Company Consolidated Five per Cent. mortgage bonds, both underlying issues.

Meanwhile, on February 1st, 1922, there will be due $1,222,000 of the petitioning Company's five-year five per cent. gold notes; on August 15th, 1922, $1,528,000 of the Company's five-year convertible five per cent. gold notes, and on the same day $3,000,000 of the Company's five-year convertible six per cent. gold notes.

In addition to the above the Company has at the present time a number of outstanding bills payable, for the funding of which arrangements must be made in the near future.

From the above it will be seen that between the present time and August 15th, 1922, the Company must refinance over $8,000,000 of existing interest-bearing obligations, in addition to which it must provide some form of financing for additional large sums covering necessary additions, betterments and extensions.

In our opinion in the Six-Cent Fare case we commented upon the fact that during the period 1912 to 1917, inclusive, the average fixed charges of the petitioning Company had amounted to $2,810,807 and its average balance to surplus $848,802, saying in this connection:

> "It will be noted that the above net earnings amounted to approximately one and one-third times the amount of the Company's fixed charges, a ratio by no means excessive in view of the desirability of upholding the credit of the Company, and, in fact, considerably less than that demanded by reasonably conservative investors."

In the case now before us there was adduced a considerable amount of testimony relative to the unmarketability under existing conditions of street railway securities upon anything like favorable terms where such corporations had earnings available for interest, dividends and surplus less than one and two-thirds times or double their fixed charges. Numerous instances were given of the high cost of money in the case of the sale of street railway securities in the recent past.

This opinion has already been so far prolonged that we will not stop to discuss this subject further than to say that the high cost of financing in the case of public utilities is one which ordinarily falls directly upon the consumer and must be paid by him through the rates charged for the service, and to refer to the latest decision of the Supreme Court of the United States touching upon this subject and recognizing the difficulties of financing under existing conditions in the case of public service corporations.

In the case of the *Lincoln Gas & Electric Light Company* v. City of Lincoln, decided June 2nd, 1919, Mr. Justice Pitney, delivering the opinion of the Court, said:

> "It is a matter of common knowledge that, owing principally to the World War, the costs of labor and supplies of every kind have greatly advanced since the ordinance was adopted, and largely since this cause was last heard in the court below. And it is equally well known that annual returns upon capital

and enterprise the world over have materially increased, so that what would have been a proper rate of return for capital invested in gas plants and similar public utilities a few years ago furnishes no safe criterion for the present or for the future."

Under the circumstances, this Commission has no hesitancy in saying that the best interests of the public with respect to the petitioning Company require that it should earn a balance of not materially less than one and a half times its fixed charges after the payment of operating expenses, taxes and the making of reasonable allowances for its accident and depreciation reserves.

Our calculations show that the amount of additional earnings required to produce this sum is approximately $1,000,000.

Reference to Table IV, our estimated income statement, will show that we estimate the Company's total net receipts for the year, before deducting fixed charges, to be $3,685,077. If this amount be increased by $1,000,000 it will be found to be something less than one and one-half times the Company's interest charges.

Testing the above conclusion in another way, we find that on August 31st, 1919, the Company's funded and floating debt amounted to $65,996,000. If, now, we were to accept as correct the contention so frequently made that the Company's outstanding stock to the amount of $20,484,200 represents no actual value, and assume that the outstanding funded and floating debt represents the full fair value of the Company's property, we will find that the above return of $4,685,000, which we have stated to be a reasonable return, amounts to a return of barely seven per cent. upon the fair value of the Company's property as indicated by its outstanding funded and floating debt.

This Commission, in all its history, which includes a long pre-war period, during which the cost of money was very much lower than at present and operating risks not nearly so great as now, has never held that a return of seven per cent. was unreasonably high when rates were based upon valuation.

In the two Telephone Company cases we held that the Company should be permitted to earn a return not exceeding eight per cent.; in the case of the Baltimore County Water & Electric Company we established rates estimated to yield between seven and eight per cent. upon the fair value of the property as determined by this Commission. In the cases of the Consolidated Gas Electric Light and Power Company of Baltimore the charges authorized by us were estimated to yield the Company a return of approximately 8 per cent. upon the assumed fair value of the property. In a number of other cases we have held that, in view of the nature of the risks surrounding the operation of public utilities, the rate of return should materially exceed the current legal rate of interest, six per cent.

We are not to be understood by anything we have said with respect to the fair value of the property here in question that such fair value is to be measured by the outstanding funded debt of the Company. We have not so decided, and use that assumption only for purposes of illustration and to show that these returns in money which we have concluded the Company should have would be no more than a reasonable return if measured upon the basis of such assumption.

Our conclusion is, therefore, that the petitioning Company is entitled to charge rates which will yield it a balance to surplus of approximately $1,000,000 after the payment of its operating expenses, taxes, fixed charges, and the making of reasonable allowances for the maintenance of its accident and depreciation reserves.

It remains now to be seen what rate of fare will be necessary to yield such balance to surplus of approximately $1,000,000.

RATE OF FARE NECESSARY

Having reached the aforegoing conclusion, it now becomes necessary for the Commission to establish for the Company rates of fare which may reasonably be anticipated to yield the petitioning Company a net balance to surplus of approximately $1,000,000, after the payment of operating expenses, taxes, fixed charges and the set-

ting aside of the amounts hereinbefore declared by us to be reasonable for the creation and maintenance of proper depreciation and accident reserves.

Reference to the Company's revised schedule P. S. C. Md. No. 8 will show that, in addition to the regular base rate of six cents for adults, there were prescribed in such schedule and are now in force under our Order No. 4608 and supplementary orders Nos. 4609, 4646 and 4944 a number of special fares, to wit: half fares commutation tickets for first, second and third zones, cash transfers on the Curtis Bay Line and tickets in bulk for the use of the employees of the Bethlehem Steel Company and the Central Foundry Company.

The Company has proposed flat increases of from one-fourth cent to one and one-half cents in each of the above special rates with the exception of the half fares for children, as to which it has proposed no increase.

The Company has also furnished the Commission an estimate of the number of such special fares which will probably be paid during the year 1919, together with an estimate of the yield of the same in the event of such proposed increases. These figures were based on increases in the base rate of from one-fourth of a cent to one and one-half cents, respectively.

For our present purposes it will suffice to take the Company's estimate based on the supposition of a one-cent increase in both base and special fares. This estimate is shown in the following table:

TABLE VIII.

YIELD OF INCREASES IN SPECIAL FARES.

Increase on One-Cent Basis.

7,918,283	Half Fares	4	cts.		
1,512,622	Curtis Bay Cash Transfers	4	"	1 ct.	$15,126.22
1,437,730	1st Co. Com. Tickets	4½	"	1 "	14,377.30
407,740	2nd " " "	5	"	1 "	4,077.40
54,530	3rd " " "	5	"	1 "	545.30
1,947,508	Bethlehem Steel	4½	"	1 "	19,475.08
128,250	Central Foundry	5	"	1 "	1,282.50
13,406,663					$54,883.80

It will be seen from this table that the Company estimates that out of a total of 240,777,100 revenue passengers during the year there will be but 13,406,663 of the same using half fares and the above classes of special tickets, and that a flat increase of one cent in the case of each such special fare, with the exception of half fares, would yield the Company an additional revenue of but $54,883,80. It follows that an increase of one-half cent in these special fares would yield the Company but $27,-441.80 additional revenue.

In case of half fares for children the former rate of three cents was sixty per cent. of the adult rate of five cents. With the increase in the adult rate from five to six cents, it seemed desirable at the time of our former order to increase the half fares to four cents, or sixty-six and two-thirds per cent. of the adult rate. Under the circumstances, the Commission would not feel justified in making any further increase in this particular fare unless it should happen that by reason of a considerable increase in the adult rate the half-fare rate would be disproportionately low as compared with the rates in force for many years before the increase in the adult fare from five to six cents.

In our previous opinion and orders in the Six-Cent Fare case the charge for Curtis Bay cash transfers was increased from three to four cents in order to be more nearly proportionate to the increase in the base rate from five to six cents. Under the circumstances, the Commission does not feel that there should now be a further increase in the charge for this cash transfer, since the effect of the increase in the base rate which we are about to authorize will be only to bring the four-cent cash transfer on the Curtis Bay Line, if permitted to remain at four cents, more nearly proportionate to the new base fare as compared with the original transfer charge of three cents and base fare of five cents.

For the same reason the Commission is not inclined to make any further increases at the present time in the case of the commutation tickets or special tickets for employees of the Bethlehem Steel Company and Central Foundry, as such increases were in our former order

somewhat disproportionate to the amount of the increase in the base fare, this having been necessary at the time in order that such increase might be in convenient fractions of the cent.

The Company's estimate of 13,460,663 special fares was based upon its estimate of 240,777,100 revenue passengers for the entire year. Consequently the Commission's estimate of 243,000,000 passengers for the year, coupled with the fact that there will probably be a greater use of commutation books with the proposed readjustment of fares, would seem to justify the assumption that there will be a somewhat larger number of patrons paying these special fares in future than in the past. Without attempting to make a minute calculation based upon these factors, we have assumed that there will be approximately 14,000,000 users of these special fares during the year which will be covered by our order.

Deducting this figure from the 243,000,000 revenue passengers estimated by us leaves a balance of 229,000,000 revenue passengers who will have to make up the increase revenues required by the Company.

Any additional sums raised through increases in the fares will be subject to the park tax, which we find is 6.91 per cent. of the Company's total passenger revenues.

Since we know that one cent additional fare charged 229,000,000 passengers would yield $2,290,000, and that sum is far in excess of the amount which we conclude the Company properly requires under existing conditions, it is evident that whatever increase in the base rate of fare is made must be an increase of a fractional part of a cent, and will consequently involve the use of tickets or fare checks.

It is equally obvious that not all of the adult passengers of the Company will make use of these checks, and it therefore remains to determine what percentage of such passengers paying the full fare will probably use the same.

Mr. Zimmerman based his estimates of the probable yield of a seven-cent fare, with four tickets for twenty-five cents, upon the assumption that not less than eighty

per cent. nor more than ninety per cent. would avail themselves of the privilege of purchasing checks at the reduced rate. In the case of his estimates based on a seven-cent fare, with three tickets for twenty cents, he assumed that not less than seventy per cent. nor more than eighty per cent. of the passengers paying the full fare would use such tickets, the differences in these assumptions being due to the fact that in the case of four tickets for twenty-five cents there would be a saving of three-fourths of a cent on each individual ticket, whereas in the case of three tickets for twenty cents there would be a saving of but one-third of a cent on each ticket. In the case of Mr. Zimmerman's estimates as to the effect of a ten-cent base rate, with two tickets for fifteen cents, he estimated that between ninety and ninety-nine per cent. of the passengers would avail themselves of the reduced rate through the purchase of the two tickets for fifteen cents, in view of the saving of two and one-half cents on each fare through such purchases of tickets.

The Commission is inclined to think that Mr. Zimmermann's estimates of ticket purchasers in the case of four tickets for twenty-five cents or three tickets for twenty cents are rather high, and is confirmed in this belief by its studies of the experience of the Washington Railway and Electric Company and the Capital Traction Company, both of Washington, D. C., where the use of the five-cent cash fare or six tickets for twenty-five cents has continued from 1894 until about a year ago. In this case there was a saving of five-sixths of a cent with the purchase of each ticket. In addition, as we have seen, the ticket system has been in vogue in Washington for nearly twenty-five years, during which time the public has grown accustomed to the use of the tickets and thoroughly familiar with the advantages of their purchase.

The following table shows the comparatively recent experience of the Washington companies in this respect, these being the only figures available at the date of this opinion:

TABLE IX.

PER CENT. OF PASSENGERS USING TICKETS, WASHINGTON, D. C.

5c Cash or 6 Tickets for 25c.

W. R. & E. Co.	*Year*	*Capital Traction Co.*
	1900	77.0
	1908	80.9
83.62	1909	80.7
84.10	1910	80.9
84.44	1911	80.9
84.71	1912	80.8
84.88	1913	80.7
85.36	1914	81.2
84.95	1915	81.1
85.37	1916	80.9
85.05	1917	80.5

In view of the experience of the Washington companies as set forth in the above table, the Commission has concluded that it would be reasonable to assume that for the present at least the people of Baltimore may be expected to purchase tickets at reduced rates between the limits of fifty per cent. as a minimum and eighty per cent. as the maximum.

The following table shows the estimated yield of additional fares at different rates upon the respective assumptions that fifty per cent., sixty-six and two-thirds per cent., seventy-five per cent. or eighty per cent of patrons paying the full fare will use fare checks or tickets:

TABLE X.

ESTIMATED YIELD OF ADDITIONAL FARES AT DIFFERENT RATES.

Estimated additional revenue from increased fare base	243,000,000	passengers per annum
Less passengers paying other than full fare	14,000,000	
Number of passengers paying increased fare	229,000,000	

	Additional Yield			
	7c Cash Fare, 4 Tickets for 26c			
	50%	66 2/3%	75%	80%
Full base fare increase	$1,145,000	$763,333	$572,500	$458,000
Fractional fare increase	572,500	763,333	858,750	916,000
Total additional revenue	$1,717,500	$1,526,666	$1,431,250	$1,374,000
Less Park Tax	118,679	105,492	98,899	94,943
Net additional revenue	$1,598,821	$1,421,174	$1,332,351	$1,279,057
	7c Cash Fare, 4 Tickets for 25c			
Full base fare increase	$1,145,000	$763,333	$572,500	$458,000
Fractional fare increase	286,250	381,667	429,375	458,000
Total additional revenue	$1,431,250	$1,145,000	$1,001,875	$916,000
Less Park Tax	98,899	79,120	69,230	63,295
Net additional revenue	$1,332,351	$1,065,880	$932,645	$852,705
	7c Cash Fare, 3 Tickets for 20c			
Full base fare increase	$1,145,000	$763,333	$572,500	$458,000
Fractional fare increase	763,333	1,017,777	1,145,000	1,221,333
Total additional revenue	$1,908,333	$1,781,110	$1,717,500	$1,679,333
Less Park Tax	131,865	123,074	118,679	116,042
Net additional revenue	$1,776,468	$1,658,036	$1,598,821	$1,563,291

Mr. Zimmermann, in his testimony, gave virtually no explanation of or reason for his assumptions as to the minimum number of passengers who would purchase tickets, and there was no other evidence adduced at the hearings upon this point.

Under all the circumstances and after a careful study of this most important phase of the situation, the Commission has concluded that in the case of the sale of four tickets for twenty-six cents not less than sixty-six and two-thirds nor more than seventy-five per cent. of the patrons of the Company will use tickets, and that the proper estimate lies about midway between the two, or 70.833 per cent.

Applying these conclusions to the above figures in the case of four tickets for twenty-six cents, we find that the net increase in revenues, after the payment of the park tax, would be $1,376,762.

From this sum should be deducted the $805,524 wage increase less our estimated $506,127 balance to surplus under the six-cent fare without such wage increase, or $299,397, leaving a net balance to surplus of $1,077,365.

From this sum should be deducted the ten per cent. Federal income tax which the Company is required by law to pay upon its net income. Upon our estimate this would amount to $107,736, leaving a final balance to surplus of $969,629.

A summary of the above calculations will be found in the following table:

TABLE XI.

COMMISSION'S FINAL ESTIMATE OF EFFECT OF INCREASED FARE.

Net increase from additional full fare after deduction of park tax @ 6.91%		$1,376,762
Deduct wage increase	$805,524	
Less estimated balance to surplus subject to wage increase	506,127	
		299,397
Balance to surplus, 7c fare, 4 tickets for 26c		$1,077,365
Less Federal income tax		107,736
Final net balance to surplus		$969,629

We therefore conclude that the Company should be permitted by our order about to be passed to increase its existing six-cent adult or base charge to seven cents, and required to sell four tickets or checks representing this charge for twenty-six cents.

FUTURE MODIFICATIONS OF FARES

The Commission's order passed pursuant to this opinion will provide that the fares established therein shall remain in force and effect for one year from October 1, 1919, to September 30, 1920, unless earlier modified or abrogated by the further order of the Commission. Such order is not to be taken either by the Company or by the public as a guarantee that such fares will continue in force during the whole of that period.

In the course of our opinion we have pointed out that we are dealing at the present time with abnormal conditions, and this means that existing conditions may either remain fairly constant for some time into the future or may at any time grow materially better or materially worse so far as the Company is concerned. Our conclusions have been reached upon the assumption that they will remain practically constant during the coming twelve months.

Our order will further provide that the Company shall continue to furnish the Commission as heretofore accurate and complete monthly statements setting forth the number of revenue and transfer passengers carried, the number of car-miles operated, the cash receipts from operations and other sources, and the operating and other expenditures of the Company, all set forth in the manner prescribed by the rules of this Commission for accounting by street railway companies.

These reports will be scrutinized closely by the Commission and its staff as they are received from month to month, and if it appears at any time that our estimates of receipts and expenditures are so far wrong as to make it unjust either to the Company or to the public that the rates prescribed in our order be continued until the end of the year therein prescribed, steps will be taken at once to modify the same.

It is to be understood by all concerned that our order passed pursuant to this opinion is so far tentative that it can be reopened at any time within such twelve months upon the evidence adduced in this and the previous case and the monthly reports which will be furnished under oath by the Company as above stated.

In other words, there will be no necessity, during the coming year at least, for any lengthy, formal hearing upon applications for either the increase or decrease of the fares established by our order.

The Commission now has before it the complete operating figures of this Company for a period of approximately seven years, and there is now no necessity for further details as to such operations in the past or for further estimates of probable future operating results, except in so far as the estimates contained in this opinion may require modification from time to time by reason of actual results.

If it should happen that the experience of several months under the new rates should demonstrate that the Company is earning a larger net revenue than is anticipated by this order, and that there is a reasonable probability that such excess earnings during the course of the year would be such as to justify some reduction in the base rate of fare, the Commission will, of its own motion, require the Company to show cause why such decrease should not be made.

If, on the other hand, such reports, upon thorough investigation by the Accounting Department of the Commission and by the members of the Commission itself, should demonstrate that the Company is earning materially less than we now anticipate it will earn under such rates, the Company will be permitted to make an application for their increase, with the understanding that the Commission will confine the hearings upon such application, as far as it can reasonably do so under the law, to the precise issue of the rate necessary to yield approximately the net balance to surplus which we have declared a reasonable one for the Company to earn during the period of the next twelve months.

The order will further provide in substance that at the end of such period of twelve months the base rate shall revert to the present fare of six cents, unless it shall then be made to appear that some other rate than six cents is a proper rate thereafter to be charged by the Company.

Meanwhile the Commission expects to give much thought to the "Cost of Service" plan which has been adopted in the comparatively recent past by a number of cities in the United States and elsewhere for the better and more satisfactory regulation of fares to be charged by street railway companies.

The theory of these plans is in brief that the owners of street railway properties are entitled to receive from the public the actual cost of the service rendered, including in that cost the reasonable expenses of operation, maintenance, taxes, fixed charges and a fair return upon the fair value of the investment, with the proviso that as the cost of service increases the fares go up, and as the cost of service decreases the fares come down, such plans providing for the ready ascertainment of the pertinent facts without the necessity of prolonged hearings and investigations.

These cost of service plans are usually predicated upon the fair value of the property used in the service, that value either being fixed by the Commission or agreed upon by the public and the owners of the property.

Such plans have been adopted in Cleveland and Montreal, in both of which cities they have been reported to work with considerable satisfaction to the public as well as to the owners of the property. Somewhat similar plans have been authorized by the Massachusetts Legislature, and a modified form of the plant provided by the statutes of that State has been in use for some time in the city of Boston, where its result has been anything but satisfactory to the public at large. Such plans have also been tried in one form or another in many other cities with varying degrees of success or failure, as the case may be.

This Commission hopes within the course of the next few months to be able to formulate and present to the public a complete study of these plans with the results achieved thereunder in the various cities where they have been tried, and our conclusions in the premises. It may well be that the Commission's conclusions will be that legislation should be enacted to make provision for the adoption of plans of this general character in this State, in which event our recommendations will be made to the coming session of the General Assembly.

THE PARK TAX AND PAVING CHARGES.

Under certain ordinances of comparatively long standing, ratified by the General Assembly of Maryland in some instances, the United Railways and Electric Company of Baltimore is required at the present time to pay a tax amounting to nine per cent. of its gross receipts on certain lines, this sum going into the fund for the maintenance of the public parks of the city. This tax equates at the present time 6.91 per cent. of the total passenger revenues of the Company. Upon this basis, and upon the assumption that the Company's passenger revenues during the next twelve months will be $14,305,410, as estimated by the Commission, this tax will amount to the sum of $988,504.

This sum is very much greater than the amounts paid in previous years, this fact being due to the increased amount of patronage, in the recent annexation of parts of Baltimore and Anne Arundel Counties to Baltimore City, and to the recent fare increase from five to six cents and the present increase from six to six and one-half cents.

In addition to this large percentage of its gross receipts paid directly into the park fund, the Company also pays taxes to the city, counties and State on its real estate, and is also required by law to pave between its tracks and for two feet on either side thereof, and keep such paving in repair.

These forms of taxation were all adopted in the case of the Railways Company before the days of regulation, and at a time when it was assumed that what the

public got through these forms of taxation came out of profits which the stockholders would otherwise have received.

Under regulation, where the effort is to regulate the charges made by a public utility for the service rendered in almost exact proportion to the actual cost of such service, all these taxes go into and form a part of such cost, with the result that it is no longer a question whether the public at large or the stockholders will pay these taxes, but the question is whether the general public or the portion of the public getting the service of the utility shall pay the same.

In the case now before us, for instance, the sum of the park tax, general taxes and the paving charges to which this Company is subject amount to something more than the one-half cent which has been added to the fare. Without those charges the fare could have remained at six cents.

It is the purpose of the Commission to make a complete study of this subject in the immediate future, and determine what, if any, recommendation it should make to the Legislature.

In many other cities where the public has been confronted with much the same difficulties with respect to their street railway service as confronts the public of Baltimore, one of the first steps taken by the public to relieve the situation and lessen the burden upon the users of the street railways has been to abolish all or some of these forms of taxation.

The Commission is not prepared at the present time to make any recommendations in connection with any of these forms of taxes, and, in fact, has reached no definite conclusion itself as to what should be done in the premises.

ZONE EXTENSIONS TO NEW CITY LIMITS.

In the Six-Cent Fare case it was contended that the legal effect of that portion of Section 2 of Chapter 82 of the Acts of 1918, providing that all existing provisions of the Baltimore City Charter should be applic-

able to such portions of Baltimore and Anne Arundel Counties as were annexed to Baltimore City by that act, was to extend the provisions of Section 796 of the City Charter prescribing certain fares within the old limits of the city to such annexed portions of Baltimore and Anne Arundel Counties and thereby make uniform the fares within the limits of Baltimore City as enlarged by such act.

As was stated in our opinion in the former case, this question was submitted to the Commission's General Counsel, who advised the Commission that by the Public Service Commission Law the whole matter of the rates of fare proper to be charged by the Company had been committed by the Legislature in the first instance to determinations by the Commission, subject to review by the courts as in said law provided.

In the former case the Commission said the general question of fare zones should be made the subject of an independent study, and that this could not be done until the effect of the increased fares, on the basis of the existing zones, had been demonstrated by experience over a reasonable period.

That experience has now been had, with the results set forth in an earlier portion of this opinion. Those results demonstrated conclusively that it would not have been possible to make such extensions to the city limits under the six-cent rate of fare prescribed by our order in that case.

During the hearings in the case now before us numerous applications were filed asking the Commission to require the Company to extend its first fare zone to the new city limits in various directions, and the Commission caused a study to be made of the effect of extending the first fare zone to the new city limits on each of the lines of the Company.

A study of the situation confronting the Company through the extension of the first fare zone to the new city limits involves an understanding of the mileage of the present second fare zone, which remains outside the new city limits, and determination whether it would be

expedient to create a new zone out of the remaining portion of the present second fare zone or include such portion in the present third zone (which would then become the second zone). An alternative of this would be the entire elimination of the present second zone, which would mean carrying passengers a short distance beyond the new city limits for one fare. The Company's officials were of the opinion that where the portion of the present second zone extending beyond the city limits is less than two miles in length it should be added to the next zone or else be considered within the first fare zone, since it was obvious that great objection would be made to paying the full fare in a zone where the maximum ride permitted was less than two miles.

The following table shows the mileage remaining outside the new city limits:

TABLE XII.

MILEAGE OUTSIDE NEW CITY LIMITS.

	1st County Zone				
Line	In New City Limits	Outside New City Limits	Total	2nd County Zone	3rd County Zone
Pimlico-Pikesville	2.51	1.67	4.18	3.61	5.91
West Arlington-Gwynn Oak	5.94	.55	6.49		
Walbrook-Gwynn Oak.....	2.85	.55	3.40		
Woodlawn	.89	1.02	1.91		
Curtis Bay	4.12		4.12		
Towson	.83	2.12	2.95		
Catonsville	1.52	2.11	3.63		
Lakeside	1.59	.56	2.15		
Riverview	3.47	.78	4.25		
Ellicott City	.43	2.85	3.28	2.76	
Mt. Washington-Pikesville..	2.42	2.00	4.42		
Back River	2.10	2.61	4.71	2.87	
Sparrows Point-Dundalk ..	2.80	1.60	4.40	3.48	4.42

The following lines show a remaining mileage of less than two miles, and the portion of the zone remaining in the county would therefore have to be considered either as having been combined with the city zone or added to the next county zone:

West Arlington-Gwynn Oak
Walbrook-Gwynn Oak
Woodlawn
Lakeside
Riverview
Sparrows Point-Dundalk

The entire Curtis Bay line is in the new city limits and would have to be considered as eliminated under the proposed plan. Of the Pimlico-Pikesville line 1.67 miles of the second fare zone remains outside the new city limits. If this be added to the present third fare zone, this zone would have a mileage of 5.28 as compared with 5.91 miles on the present fourth fare zone of this line.

2.12 miles of the present second fare zone of the Towson line remain outside the new city limits; 2.11 miles of the second fare zone of the Catonsville line remain outside the new city limits; 2.85 miles of the present second fare zone of the Ellicott City line remain outside the new city limits, and 2 miles of the Mount Washington-Pikesville line remain outside the new city limits. Separate zones would have to be created in each of these cases.

The Traffic Department of the Company stated that eventually all of the Back River lines would be in the first fare zone, and it was accordingly considered as being eliminated.

The following table shows the number of passengers carried on each of the present second fare zones, together with the percentages such passengers bore to the total passengers carried during the entire year 1918 and first six months of the year 1919:

TABLE XIII.

NUMBER OF PASSENGERS CARRIED IN SECOND FARE ZONES.

Line	*Year* 1918	*% of Total*	*Six Months* 1919	*% of Total*	*Total Eighteen Months*	*% of Total*
Pimlico-Pikesville	1,400,171	.617	700,242	.594	2,100,413	.609
West Arlington-Gwynn Oak	155,318	.068	61,505	.052	216,823	.063
Walbrook-Gwynn Oak	127,173	.056	52,746	.045	179,919	.052
Woodlawn	192,668	.084	68,504	.058	261,172	.076
Curtis Bay	3,252,785	1.434	1,369,813	1.162	4,622,598	1.341
Towson	1,313,458	.579	667,191	.566	1,980,649	.575
Catonsville	1,118,288	.494	569,134	.483	1,687,422	.489
Lakeside	171,493	.076	96,507	.082	268,000	.078
Riverview	2,276,662	1.004	927,512	.787	3,204,174	.929
Ellicott City	1,144,994	.505	588,899	.499	1,733,893	.503
Mount Washington-Pikesville	64,014	.028	29,754	.025	93,768	.027
Back River	2,499,795	1.102	1,167,892	.990	3,667,687	1.064
Sparrows Point-Dundalk	7,211,094	3.179	3,453,795	2.928	10,664,889	3.093
Total	20,927,913	9.226	9,753,494	8.271	30,681,407	8.899
Total revenue passengers entire system	226,834,528		117,919,120		344,753,648	

The above table shows that for the year 1918, 9.226 per cent. of the total revenue passengers were carried in the second fare zones, and that during the first six months of 1919, 8.271 per cent. were so carried. As the summer months have a distinct influence on the county lines, the former percentage, 9.226, has been used hereinafter in preference to either the six months or eighteen months figures shown in the above table.

The following table shows the estimated loss in revenues from the extension of city zones in all cases upon the suppositions above set forth, the chief of such suppositions being that where the extension of an existing city zone to the new city limits would leave less than two miles of the first county fare zone, the first county fare zone will either be taken into the city zone or into the next county fare zone:

TABLE XIV.

ESTIMATED LOSS IN REVENUES FROM EXTENSION OF CITY ZONES.

Line	*Per Cent. of Loss*
Pimlico-Pikesville	100% of .617% or .617%
West Arlington-Gwynn Oak	100% of .068% or .068%
Walbrook-Gwynn Oak	100% of .056% or .056%
Woodlawn	100% of .084% or .084%
Curtis Bay	100% of 1.434% or 1.434%
Towson	10% of .579% or .058%
Catonsville	10% of .494% or .049%
Lakeside	100% of .076% or .076%
Riverview	100% of 1.004% or 1.004%
Ellicott City	10% of .505% or .050%
Mount Washington	100% of .028% or .028%
Back River	100% of 1.102% or 1.102%
Dundalk	100% of 3.179% or 3.179%

Total per cent. of revenue passengers eliminated		7.805%
(a) Estimated revenue passengers		243,000,000
Estimated Passenger Revenue		
(b) Under existing fares	$14,305,410	
(c) From fare increase	1,376,762	
		$15,682,172
(d) Average fare, entire system, new rate		6.453c
(e) " " " " old "		5.887c
(f) " fare in second fare zone during first six months of 1919		5.68c
(g) Assumed average fare in second fare zone, new rate		6.20c
(h) 7.805% of 243,000,000		18,966,150
(g) x (h) represents total loss from eliminating above second zones		$1,175,901

It will be noted that the above table assumes that but ten per cent. of the traffic originating in the second fare zones on the Towson, Catonsville and Ellicott City lines will be lost through the extension of the city zone to the new city limits the short distance required in each of these cases.

The above table shows that the effect of extending the city zone to the new city limits would be that the Company would sustain a loss in revenues of approximately $1,176,000 per annum, which is within $200,000 of the amount estimated by the Commission to be yielded by the new increase in fare. This would require the addition of

approximately one-half a cent to the new six and a half cent base rate, and bring the base rate up to at least seven cents flat.

Under these circumstances, the Commission cannot see its way clear at the present time to require these extensions to be made, and thinks it would be unwise to select any of these zones for such extensions until the new rate has been given a fair trial and it is seen what the yield thereof will be.

It may well be that experience with the new rates will demonstrate earnings in excess of those estimated by the Commission.

In such event, the Commission will have to consider the relative merits of what will no doubt be a general demand on the part of all the public for a reduction in the ticket rate from six and one-half cents to six and one-quarter cents each, and the demand of those residing in these second zones for extenions of the first zone. Or it may be that the rates will yield so much in excess of our estimates that the Commission will find its way clear to grant relief in all these cases.

But, on the other hand, it may happen that our estimates of earnings will be in excess of actual earnings, and that such actual earnings, even without any of such extensions, will be inadequate to meet the requirements of the Company and yield it the return to which we have declared it properly entitled.

This Commission has no more right to assume that its estimates will be excessive than it has to assume that they will be inadequate, and until they have been given an actual trial over a reasonable period of time we must decline to direct the extension of any of these zones.

An order will be passed embodying the principal conclusions in the aforegoing opinion.

ORDER No. 5120.

Before the Public Service Commission of Maryland.

Case No. 1682.

In the Matter of the Petition of The United Railways and Electric Company of Baltimore for a Modification of Certain Orders, Now in Force, Fixing the Rates of Fare to Be Charged by Said Company and for Permission to File, Publish and Put in Effect a New Schedule of Rates of Fare, Increasing Existing Rates, as Set Forth in This Petition.

Pursuant to the conclusions reached in the aforegoing opinion, it is, this 30th day of September, in the year Nineteen Hundred and Nineteen, by the Public Service Commission of Maryland,

ORDERED, (1) That Order No. 4608 entered by this Commission on January 7th, 1919, as modified and amended by Order No. 4646 entered on January 28th, 1919, and the first paragraph of Order No. 4609 entered on January 7th, 1919, be and they are hereby annulled and rescinded.

(2) That from and after this date and until September 30th, 1920, and for no longer, unless such period be extended for a further period as hereinafter provided, or this order be earlier modified or abrogated by further order of this Commission. The United Railways and Electric Company of Baltimore shall be permitted to charge and collect for the transportation of persons over its several street railway lines, in Baltimore City and vicinity, the following rates, fares and charges, to wit:

(*a*) Six and one-half cent fare when tickets or fare checks are purchased, or seven cents cash, for the conveyance of each passenger over twelve years of age, and four cents for each child between the ages of four and twelve years, on any of its lines between the points designated under the first general caption in its schedule P. S.

C. Md. No. 8, filed with this Commission August 28th, 1918, effective October 1st, 1918, or between intermediate points, in either direction, on any of such lines, except in the case of its Curtis Bay line, on which line The United Railways and Electric Company of Baltimore shall issue transfers entitling the holder to a continuous ride on such line as such transfers were issued on and prior to September 30th, 1918, except that the charge for such transfers shall be four cents instead of three cents, as theretofore.

(*b*) Full fare and half fare continuous trip tickets, good as fare on connecting lines, to be sold on the lines and between the points, on the Company's Gorsuch Avenue, East Monument Street (Orangeville), Third and Eighth Streets, Union Avenue, South Charles Street, Walbrook-Hillsdale, Shore lines and Ferry Bar lines, as designated in said schedule P. S. C. Md. No. 8, otherwise the regular fare to be collected between the points so designated.

(*c*) Four and one-half cents when paid by commutation tickets sold for use on the first county fare zone between the points so designated in the schedule P. S. C. Md. No. 8, aforesaid, and five cents when paid by commutation tickets sold for use on second and third county fare zones, between the points so designated in said schedule, said commutation tickets to be sold in the manners and subject to the conditions set forth in said schedule with respect thereto, the full fare in each of said cases otherwise to be paid.

(*d*) Four and one-half cents between Sparrows Point and Dundalk and four and one-half cents between Dundalk and Highlandtown when paid by employee's tickets from 20-trip books sold in lots to the Maryland Steel Company for distribution; five cents between Dundalk and Highlandtown and five cents between Highlandtown and city Points when paid by strip tickets sold in lots to the Central Foundry Company for distribution; and two and one-half cents on the Lakeside line when paid by tickets from 200-trip books sold to the landowners along such line, all such tickets to be subject to the conditions printed thereon and to the rules of the Company governing the use thereof, the full fare in each of said cases otherwise to be paid.

3. That during the period this order is in effect The United Railways and Electric Company of Baltimore shall sell on its cars and at its offices and waiting rooms tickets or fare checks which shall be honored for passage on its cars, at the rate of six and one-half cents each, which said tickets or fare checks shall be sold on the cars in quantities of four (or more, in the option of the Compan), and should the conductor of a car at any time be unable for any reason to sell a passenger desiring to purchase them at least four tickets or fare checks, then such passenger shall be required to pay but six cents fare.

4. That from and after the hour of midnight on the thirtieth of September, Nineteen Hundred and Twenty, said Company's right and privilege to charge and collect the increased fares authorized hereby shall cease and determine and said Company shall thereupon put in force and effect, and maintain until thereafter lawfully changed, the schedule of fares operative on the thirtieth of September, Nineteen Hundred and Nineteen, unless this Commission shall, in the meantime, by its order in writing, have modified, extended or superseded this order; provided, however, that if this order has not been so extended or superseded and there shall be pending on September thirtieth, Nineteen Hundred and Twenty, an application by said Company filed before August thirty-first, Nineteen Hundred and Twenty, for a continuance in whole or in part of the relief hereby granted, then the right to collect the fares authorized by this order shall continue until the determination by the Commission of said pending proceedings; and provided, further, that in case of any proceedings hereafter for the right to charge and collect fares in excess of those in effect on the thirtieth of September, Nineteen Hundred and Nineteen, the burden of proving the reasonableness of any such excess fare shall be and remain on said Company.

5. That The United Railways and Electric Company of Baltimore shall furnish to this Commission accurate and complete statements under oath, and in convenient form, setting forth the number of revenue and transfer passengers carried, and the number of car-miles operated, the cash receipts from operation and other sources, and the operating and other expenditures of the Company, all set forth in the manner prescribed by the rules of this

Commission for accounting by street railway companies, so soon as may be reasonably practicable and convenient after the end of each calendar month during the period this Order remains effective, and in no event later than the last day of the next succeeding calendar month, covering the operations of the Company during the next preceding month.

6. That the right of the respondent Company to charge and collect the fares in this order prescribed shall be held subject at all times during the period covered by such order, or any extension thereof which may hereafter be granted as aforesaid, to the right and power of this Commission to reopen this case in the light of the facts disclosed by the monthly reports aforesaid, or of other facts otherwise coming to the attention of this Commission, and modify the rates of fare by this order authorized to be charged and collected by the respondent Company.

AND IT IS FURTHER ORDERED, That a copy of this order be forthwith served upon the proper officers of the respondent, The United Railways and Electric Company of Baltimore, and that said Company, within ten days from the date of the service of such copy, advises this Commission in writing whether or not it will accept and abide by the same.

(C)

CASE NO. 1682, SUPPLEMENTARY OPINION FILED NOVEMBER 29, 1919, AND ORDER NO 5223.

SUPPLEMENTARY OPINION

Before the Public Service Commission of Maryland.

Case No. 1682.

In the matter of the petition of the United Railways and Electric Company of Baltimore for the modification of certain orders, now in force, fixing the rates of fare to be charged by said Company and for permission to file, publish and put in effect a new schedule of rates of fare, increasing existing rates, as set forth in this petition.

By the Commission: Filed November 29th, 1919.

The Commission's opinion in the above case was filed September 30th, 1919, and was accompanied by an Order No. 5120 in which it was ordered, as by law provided, that the petitioning company should advise the Commission in writing within ten days from the date of service upon it of a copy of such order whether or not it would accept and abide by the same.

Before the expiration of said ten days the Company requested and obtained on extension of such period for the purpose of giving its representatives further opportunity to study and analyze the opinion of the Commission upon which such order was based.

On October 20th, the company filed a petition for a modification of such order and opinion. In such petition the company alleged in substance that before, during and since the hearing in this cause its officials had been

engaged in a comprehensive study of plans for the improvement of the service and for the increase of carrying capacity of the service rendered; that its officials had hesitated to authorize large capital expenditures in view of prevailing high prices, but that in order to keep pace with and stimulate the growth of the City and in view of the seeming stabilization of prices, such officials were about to recommend to the company's directors the purchase of from three hundred to three hundred and fifty new cars, the improvement or reconstruction of approximately forty miles of track and the expenditure of substantial sums for improvement of the power situation, all aggregating a total capital sum of several million dollars.

The company further stated in its said petition that it was willing to continue the rates of fare established by said Order No. 5120 for a sufficient length of time to determine their adequacy or inadequacy both for the proper operation and maintenance of the property and for the establishment and maintenance of the balance to surplus which this Commission had declared in said opinion the company was reasonably entitled to earn, but believed that no fair test of such order could be had until certain of the Commission's estimates of receipts and expenditures, particularly as to maintenance and depreciation reserves, had been corrected, and the Commission's expressions relative thereto made so clear that they could not reasonably be misinterpreted by the public.

Other orders extending the time within which the company should signify its acceptance or rejection of Order No. 5120 were subsequently passed, and the petition finally came to a hearing on November 14th, 1919.

At this hearing counsel for the company apparently abandoned the request that the Commission's estimates as set forth in its opinion be corrected, but contended that it should be made more abundantly clear in the opinion that such estimates were in fact merely estimates and that if the Commission's estimates of expenditures were exceeded in actual operation without a corresponding saving in other estimates, the company would not necessarily be penalized thereby. Great

stress was laid upon the necessity of upholding the company's credit in the eyes of the investing public in order that capital necessary to make the improvement referred to in the petition and for refinancing might the more readily be secured, and it was contended that with the opinion as originally written, such credit was more likely to be impaired than strengthened.

It was also contended that Section four of the order should be amended in certain minor particulars.

After a careful study of the opinion in the light of the above criticisms, the Commission is unable to see wherein it is necessary that it should be corrected or modified in order to make it more absolutely clear that our estimates of probable receipts and expenditures were in fact merely estimates, and were in no sense meant to be limitations upon the company's right to make such expenditures for the operation and maintenance of its property as might be found reasonably necessary. When the Commission states in paragraph after paragraph of an opinion that its figures are merely estimates, heads its tables with the statement that the figures therein are merely estimates, and then finally concludes that portion of its opinion with a clear statement that all of its said figures are merely estimates, and that if such estimates turn out to be materially wrong, steps will be taken at once to modify the order, based upon the same, it is somewhat difficult to see how any reader of that opinion could possibly look upon such figures other than as estimates, or conceive them in any way to have been intended as limitations upon the right of the company to expend such sums for the operation and maintenance of its property as might be found by actual experience to be reasonably necessary.

In view, however, of the fact that in the haste with which our opinion in this case was prepared in order that the new rates should go into effect by October 1st, 1919, the Commission failed to make entirely clear just what balance to surplus the company should be permitted to earn under varying conditions in the future, we have concluded that it is desirable for us to file a supplementary opinion in which our views upon this im-

portant point will be so clearly set forth that there will be no reasonable ground for any misunderstanding as to the same.

In our original opinion in this case we stated in one place that the best interest of the public with respect to the company required that it should earn a balance of not materially less than one and a half times its fixed charges, or $1,500,000 per annum, after the payment of operating expenses, fixed charges, taxes and the making of reasonable allowance for its accident and depreciation reserves. Subsequently in that opinion we stated that the company was entitled to charge rates at the present time estimated to yield it a balance to surplus of approximately one million dollars after the payment of such expenses and charges and the making of such allowances. In that opinion we neglected to reconcile these two apparently conflicting statements, with the natural result that doubt has arisen as to exactly what may hereafter be our policy with respect to the rates authorized by the order passed pursuant to such opinion.

Pending the establishment of fares based upon a valuation of the company's property or the adoption of a plan, under which fares will be more or less automatically established upon the basis of actual cost of the service rendered, it is the belief of this Commission that an earning capacity of one and a half times the fixed charges of the company is reasonable and necessary and in the interest of the public. But we do not believe that the entire burden of earning this surplus should be placed upon the public at the present time and under existing circumstances. We feel that a portion of the responsibility for earning such balance to surplus should be met by the exercise of all reasonable economies and efficiencies on its part. But the Commission is not to be understood as undertaking to establish in the future rates and fares estimated to yield such a balance to surplus of $1,500,000, or to increase existing rates in order that they may yield such amount. We merely mean that it is not our intent to refuse such earning capacity, provided the company, by diligent, sensible economies and good service can produce such a surplus. If, in time, the balance to surplus under any existing rate of fare,

should come to exceed such $1,500,000, the Commission, of its own initiative, will proceed to consider the propriety of reducing the rates of fare then in force.

Pending the institution and coming into full effectiveness of such economies and increased efficiency, it was at the date of the original opinion and is now the view of this Commission that the rates of fare authorized to be charged by the company should be such as may reasonably be anticipated to yield a balance to surplus of approximately one million dollars ($1,000,000) after the payment of the company's operating expenses, taxes, fixed charges, and the making of reasonable allowances for the maintenance of the property and of its accident and depreciation reserves.

In other words, if, after exercising what may seem to the Commission to be reasonable economy and efficiency in the operation of its property, it appears that the company is unable to earn under the established rates such a balance to surplus of approximatly one million dollars, the Commission stands ready, upon request of the Railways Company, to reconsider the estimates set forth in its original opinion, and also the rates of fare authorized to be charged by our Order No. 5120 passed pursuant thereto.

But in fixing $1,000,000 as the minimum balance to surplus which the company should be permitted to earn under existing conditions, this Commission is not to be understood as undertaking to guarantee such balance to surplus at the expense of the public at any and all hazards.

It will be noted that we have conditioned our conclusion as to such balance to surplus, first, upon the exercise of reasonable efficiency in the operation of the property, second, upon the exercise of reasonable economies, and, third, upon the expenditures of no more than reasonable amounts for the maintenance of the property and of its accident and depreciation reserves.

In our original opinion in this case we had occasion to consider what, in our judgment, would constitute reasonable expenditures for the maintenance of the

property and reasonable allowances for the company's accident and depreciation reserves. This was necessary in order for us to reach a definite basis on which to establish the rates fixed by such order. We nevertheless appreciate the impossibility of determining in advance the exact amount of money to be expended upon any one item, particularly in a period of economic readjustment, such as the present. Table IV of the original opinion and our other estimates therein, are not, therefore, to be construed as placing a limit upon the amount which may be spent by the Railways Company on each item, but should be understood as constituting an expression of the Commission's opinion as to the sums which would probably be necessary. It may be that actual experience will demonstrate the need of larger appropriations or expenditures for some of the items therein contained, but in any application hereinafter filed for an increase in the rates prescribed by such order, the company must assume the burden of justifying any expenditures in excess of our estimates set forth in such opinion. Moreover it is the hope of the Commission that if there should be any increased expenditures in excess of such estimates, such increases may be offset by increased income or by reductions in other items brought about by strict economy and greater efficiency in operating methods.

This Commission would not, under any circumstances, feel justified in going farther than the above in giving assurances as to what will be its future action with respect to any public utility subject to its jurisdiction. And especially would we not feel so justified in the case of this particular company, as its monthly reports since the date of our original opinion and order have shown expenditures for maintenance and depreciation so greatly in excess of our estimates above referred to, and largely in excess of any expenditure heretofore made in like periods on account of such items. These reports have been scrutinized thoroughly by us as they have been received, and will be further scrutinized and analyzed by us in the event of an application for authority to charge fares in excess of those prescribed by our Order No. 5120. For the present we express no opinion thereon.

In view of this reluctance upon our part to commit ourselves in advance more definitely upon the specific point of fare increase in the event of expenditures exceeding the estimates upon which our order was based the Commission feels that both the Company and the public are entitled to a full and clear statement of the general policy which we expect to follow with respect to this particular utility during the reconstruction period upon which the world at large is now fully entered.

In our original opinion in this case we discussed at some length some of the problems of rate making before, during and since the World War.

If rates are to be based upon value, they must be based upon "fair present value", and conditions are still so far from normal that we would not feel justified at the present time in accepting present-day prices as conclusive of that fair value which should be used as the basis for the making of rates to remain effective for any considerable period in the future.

On the other hand we would not feel justified in continuing longer to fix rates upon the "war emergency" basis, since the theory of that method of rate-making was merely to preserve the *status quo ante* of the property and business during the period of the emergency created by the pendency of the war.

With the end of the war the time has come when we can no longer be satisfied merely to preserve the *status quo ante* of utilities subject to our jurisdiction. Rather has the time come for the inauguration of a truly constructive policy in the case of business enterprises of all kinds, our public utilities included.

If, before and during the war, there was any uncertainty as to the relations which should or would continue to exist between the public and our public utilities, now that the war is over, it is the time, of all times, when this question should be definitely settled, in order that both the utilities and the public should know what will be the policy of the State with respect to such utilities in the future. Upon no other basis than that of a full mutual understanding of the relative rights and obliga-

tions of our public utilities and the public, can the former go ahead and do the best there is in them toward rendering adequate service at reasonable rates to the public they have undertaken to serve.

With respect to the particular utility whose affairs are here under consideration, this Commission has had little or no difficulty in determining what should be its policy in the future.

Practically ever since the creation of the Public Service Commission of Maryland in 1910, this Commission has had before it for consideration questions concerning the property, affairs and operation of The United Railways and Electric Company of Baltimore. It is one of the largest public utilities which are fully subject to this Commission's jurisdiction. As we have pointed out in other of our opinions, its continued operation is of the utmost importance to the entire community which it has undertaken to serve. This Company's property is one of great value, and one which should not be jeopardized or needlessly impaired in value by the adoption on the part of this Commission of a narrow or illiberal policy with respect to its financial affairs.

Time and again we have had occasion to consider the question of the character of service actually rendered by the Company to the public, and as well the character of service which the property is susceptible of rendering with comparatively minor improvements and additions. More recently we have noted on the part of the management of the Company what has seemed to us to be a sincere desire so to operate the property as to render the public more adequate service than has been rendered at times in the past. This attitude apparently has been based upon a growing recognition of the fact that the public has rights in our public utilities which must not be subordinated on the rights of the owners of the property.

Our consideration of the Company's affairs has extended as well to its financial situation and requirements, and this Commission, from time to time in the past, has passed orders authorizing the issuance of securities of large aggregate value, for the betterment of the property and service.

With this intimate knowledge of the Company's affairs, acquired through a period of what is now nearly ten years, this Commission is firmly convinced that the present and future welfare of this community requires the preservation of the property of the Company and its continued operation in the service of the public not only unimpaired, but in a position to meet all reasonable demands incident to the growth of the city and community.

While the property of this Company nominally belongs to its stockholders, subject to mortgages held by its bondholders, the public itself is interested even to a greater extent than either the stockholders or bondholders in the continued proper operation and maintenance of such property.

In the case of operation, the public is the first to suffer from inadequate service. Inasmuch as proper service can never long be rendered in any line of business enterprise without reasonable compensation, it is incumbent upon the public to pay for the kind of service it desires, and such public cannot justly complain if it does not receive a character of service better than that for which it has paid.

But the requirements of the public will be by no means fully met merely by a satisfactory operation of the Company's present property and equipment.

The City of Baltimore is one of the most important commercial and industrial centres in the country. This growth during the past twenty years has been regular and consistent, and has kept pace fairly well with our other large cities. During this period it has been necessary for the Railways Company to add to its service equipment and property in order that it might keep up with the community which it has undertaken to serve. During the war the advantages of Baltimore as a commercial and industrial center, and as a place of residence as well, came to be appreciated to a greater extent than ever before, with the result that a new impetus was given to our city and it has now fully entered into an era of prosperity and growth the like of which it has never enjoyed at any time in the past. But the city

cannot continue to grow to advantage unless the street railway system continues to grow as well and keep abreast in all respects with the community which it serves.

It appears by the petition of the Company that it now has under consideration plans for the expenditure in the near future of three or four millions of dollars in the purchase of some three hundred to three hundred and fifty new cars, the improvement or reconstruction of approximately forty miles of track, and the general improvement of service.

This money is to be expended for the benefit of the public. The surplus which the Company accumulated in pre-war times, together with the depreciation reserves which had been accumulated under more favorable conditions, has been exhausted. Therefore the Company has no funds at the present time with which to make these improvements. Hence this large sum must be borrowed, and in order to borrow the same the Company must have credit with the investing public.

It is a well-known fact that there is at the present time an almost unprecedented demand for money to meet the requirements of the business world of today. The high prices being paid for commodities of all kinds, with their resulting promise of unusually large profits, are stimulating enterprise in almost every line of business endeavor. Foreign governments as well as our own government are offering higher rates of interest for the use of money than they have paid for generations past. The securities of large and hitherto most prosperous public utilities throughout the country are being bought in the open market at abnormally low prices in order that purchasers thereof may assure themselves of an interest yield materially in excess of the return with which they were satisfied prior to the war. The daily papers are full of offers of all kinds of securities issued by business enterprises of the highest standing, and which are so much in need of money for further development that they are willing to pay unusually high prices for the use of the same.

Companies with assets in some instances of a value

several times in excess of their outstanding obligations and with assured earnings three, four, five and six times their interest charges, are offering six and seven and in some instances as high as eight per cent. for the use of funds with which to further develop their business.

With such a demand for the use of money, investors are demanding substantial security for their loans, and are insisting that there be both a substantial equity in the property over the amount of funded securities and assured earnings largely in excess of the aggregate interest charges thereon. If less than this is offered, the investors will either decline to make the loan upon any terms whatsoever, or will insist upon an abnormally high rate of interest in order to compensate them for the additional risk taken in making the investment. This last means either that the interest rate itself must be abnormally high or that the securities be sold at a discount which will yield the desired rate.

In the case of a public utility, where securities are sold at a discount with the consent of the state regulatory body, the utility is entitled to charge the public in addition to what would otherwise be the cost of the service the amount necessary to amortize such discount during the life of the security. Where, on the other hand, the interest rate is made abnormally high with the consent of the state regulatory body, good faith requires that the purchasers of such securities be protected in their investment by the fixing of rates which will enable the utility to pay such abnormally high rate of interest.

Thus, in either event, the public is the one to suffer most where the financial credit of any of its utilities is so far impaired that it is obliged to pay abnormally high prices for the loan of funds to be used in improving its property or service for the benefit of the public.

It follows that the prospective investors shall be given reasonable assurances of earnings materially in excess of the Company's interest charges.

The present interest charges of the Railways Company amount to approximately three million dollars. It is this Commission's judgment that a balance to sur-

plus varying from approximately one million five hundred thousand dollars as the maximum, both conditioned as hereinbefore set forth, and the latter subject to increase with increases in the Company's funded debt, would not only provide fair and reasonable compensation to the Company for the service which it expects hereafter to render the public, but would in addition give the Company such credit with the investing public as will enable it to secure upon reasonably favorable terms the capital necessary for all its corporate requirements.

For the reasons herein stated the application of the Company for a modification of the estimates contained in our original opinion will be refused, but inasmuch as it appears that the changes, which the Company's representatives suggested should properly be made in Paragraph Four of our Order No. 5120, a new order will be passed embodying such changes.

ORDER NO. 5223

Before the Public Service Commission of Maryland

Case No. 1682.

In the matter of the petition of the United Railways and Electric Company of Baltimore for a modification of certain orders. Now in force, fixing the rates of fare to be charged by said Company and for permission to file, publish and put in effect a new schedule of rates of fare, increasing existing rates, as set forth in this petition.

Pursuant to the conclusion reached in the aforegoing opinion, it is this 29th day of November, in the year nineteen hundred and nineteen, by the Public Service Commission of Maryland,

ORDERED: That paragraph 4 of Order No. 5120 entered in this cause by the Commission on September 30th, 1919, be and is hereby modified and amended so as to read as follows:

> "That from and after the hour of midnight on the 30th of September, 1920, said company's right and privilege to charge and collect the increased fares authorized hereby shall cease and determine and said company shall thereupon put in force and effect, and maintain until thereafter lawfully changed, the schedule of fares operative on the 30th of September, 1919, unless this Commission or other lawful authority shall in the meantime have modified, extended or superseded this order; provided, however, that if this order has not been so extended or superseded, and there shall be pending on September 30, 1920, an application by said company filed before August 31st, 1920, for a continuance in whole or in part of

the relief hereby granted or increased fares, then the right to collect the fares authorized by this order shall continue until the determination by the Commission of said pending proceedings; and provided, further, that in case of any proceeding hereafter instituted before the 30th day of September, 1920, for the right to charge and collect fares in excess of those in effect on the 30th day of September, 1919, the burden of providing the reasonableness of any such excess fare shall be and remain on said company; provided, however, that nothing in this order shall be held to affect in any way the right of the company to proceed with the pending valuation to which said company is a party or its right to appeal from the finding or orders growing out of said valuation proceedings."

AND IT IS FURTHER ORDERED: That except as hereby modified and amended Order No. 5120 aforesaid shall be and remain in full force and effect.

AND IT IS FURTHER ORDERED: That a copy of this order be forthwith served upon the proper officers of The United Railways and Electric Company of Baltimore, and that said company, within ten days from the date of the service of such copy, advise this Commission in writing whether or not it will accept and abide by Order No. 5120 aforesaid as modified and amended by this order.

JNO. MILTON REIFSNIDER,

JAMES C. LEGG,

J. FRANK HARPER.

Commissioners.

(D)

CASE NO. 1682, OPINION FILED DECEMBER 21, 1919, AND ORDER NO. 5237.

OPINION.

Before the Public Service Commission of Maryland.

Case No. 1682.

In the Matter of the United Railways and Electric Company of Baltimore for a Modification of Certain Orders, Now in Force, Fixing the Rates of Fare to be Charged by said Company and for Permission to File, Publish and Put in Effect a New Schedule of Rates of Fare, Increasing Existing Rates, as Set Forth in This Petition.

Appearances:

Messrs. Joseph C. France, Edwin G. Baetjer and W. H. Maltbie, representing The United Railways and Electric Company of Baltimore;

Joseph S. Goldsmith, Esq., Assistant General Counsel, representing the Public Service Commission of Maryland.

By the Commission. Filed December 31st, 1919.

On October 1st, 1918, all fares of The United Railways and Electric Company of Baltimore were increased one cent each, the only exception being on the Curtis Bay line of said company, on which line the railway company had theertofore issued a three-cent continuous fare ticket, which was withdrawn on that date, with the result that persons transferring to or from this line were required to pay two cash fares of six cents each, or twelve cents for the ride formerly costing by eight cents. On Janu-

ary 7th, 1919, the Commission filed its opinion and entered its order in Cases Nos. 1568 and 1583, in which it upheld the reasonableness of the increased fares, save the fare on Curtis Bay line, on which line it required the railway company to restore the sale of continuous fare tickets at the rate of four cents each.

Thereafter the railway company petitioned the Commission for a further increase in fares, and on September 30th, 1919, the Commission filed its opinion and entered its Order in Case No. 1682, permitting an increase in the adult cash fare from six cents to six and one-half cents when tickets or fare checks were purchased in lots of four, or seven cents cash fare. No increase was permitted in the fares charged children or commutation fares. The increase allowed by the Commission was somewhat less than that sought by the railway company, it being the contention of the company that a fare of seven and one-half cents was essential if it was to continue rendering adequate service to the public it served, and if it was to preserve its credit so that it might attract the necessary capital required to provide for additions to and improvements in its service requisite to meet the growing demands of the community which it serves.

On December 26th, 1919, the railway company petitioned the Commission for a further increase in the adult cash fare to seven cents straight, and this application came on to be heard on December 30th.

A complete history of the railway company and of its operations has heretofore been given in the opinions of the Commission above mentioned, and the attitude of the Commission with respect to the needs and requirements of said company has been discussed at considerable length in such opinions, as well as in supplemental opinion filed in Case No. 1682 on November 29th, 1919.

The previous hearings of the Commission upon the several applications of the railway company for fare increases were most exhaustive, and the records in those cases constitute a thorough history of the financial situation of the company. Paragraphs 5 and 6 of the Commission's Order No. 5120 entered in Case No. 1682 on September 30th, 1919, provide as follows:

"That The United Railways and Electric Company of Baltimore shall furnish to this Commission accurate and complete statements under oath, and in convenient form, setting forth the number of revenue and transfer passengers carried, and the number of car-miles operated, the cash receipts from operation and other sources, and the operating and other expenditures of the Company, all set forth in the manner prescribed by the rules of this Commission for accounting by street railway companies, so soon as may be reasonably practicable and convenient after the end of each calendar month during the period this order remains effective, and in no event later than the last day of the next succeeding calendar month, covering the operations of the company during the next preceding month.

That the right of the respondent company to charge and collect the fares in this order prescribed shall be held subject at all times during the period covered by such order, or any extension thereof which may hereafter be granted as aforesaid, to the right and power of this Commission to reopen this case in the light of the facts disclosed by the monthly reports aforesaid, or of other facts otherwise coming to the attention of this Commission, and modify the rates of fare by this order authorized to be charged and collected by the respondent company."

In its opinion filed on the same day the Commission said:

"It is to be understood by all concerned that our order passed pursuant to this opinion is so far tentative that it can be reopened at any time within such twelve months upon the evidence adduced in this and the previous case and the monthly reports which will be furnished under oath by the company as above stated.

In other words, there will be no necessity during the coming year at least for any lengthy formal hearing upon applications for either the increase or decrease of the fares established by our order.

The Commission now has before it the complete

operating figures of this company for a period of approximately seven years, and there is now no necessity for further details as to such operations in the past or for further estimates of probable future operating results, except in so far as the estimates contained in this opinion may require modification from time to time by reason of actual results.

If it should happen that the experience of several months under the new rates should demonstrate that the company is earning a larger net revenue than is anticipated by this order, and that there is a reasonable probability that such excess earnings during the course of the year would be such as to justify some reduction in the base rate of fare, the Commission will, of its own motion, require the Company to show cause why such decrease should not be made.

If, on the other hand, such reports, upon thorough investigation by the Accounting Department of the Commission and by the members of the Commission itself, should demonstrate that the Company is earning materially less than we now anticipate it will earn under such rates, the Company will be permitted to make an application for their increase, with the understanding that the Commission will confine the hearings upon such application, as far as it can reasonably do so under the law, to the precise issue of the rate necessary to yield approximately the net balance to surplus which we have declared a reasonable one for the Company to earn during the period of the next twelve months."

The application now before the Commission is filed under the above quoted provisions of the Commission's opinion and order, and the issue is thereby confined to the question of the rate of fare necessary to provide a balance to surplus of approximately One Million Dollars during the ensuing year, which amount the Commission has heretofore found to be reasonable during such period.

The monthly reports of the company's earnings and

expenses required by the Commission's Order No. 5120 have been duly filed with the Commission, the balance to surplus during October and November, 1919, (the first two months of operation under the present fare) being $18,124 and $36,991, respectively, while the average pre-war surplus during the corresponding months is shown to be $86,309 and $59,873, respectively.

The following facts are set forth in the petition of the railway company in justification of the increase in fares now sought:

1. The Commission estimated that but 70.833% of the total number of passengers would avail themselves of the privilege of buying fare checks, whereas during the first twenty-three days of December the actual figure was 89.56%, which larger use of fare checks results in a shortage in income of approximately $200,000 for a year.

2. The tax rate of the City of Baltimore has been increased from the 1919 rate of $2.01 per hundred to $2.97 in 1920, with increases in the new annex and rural rates from $1.206 to $1.84 and from 67c to 99c, respectively, entailing an additional expenditure during the year upon the part of the company of $109,598.45.

3. The company paid $66,000 to the City of Baltimore for duct rentals during the year 1919, while under a pending ordinance of the Mayor and City Council of Baltimore the rental will be increased to $118,800 per annum, or $52,800 in excess of the 1919 figure.

4. An increase in the price of coal involving an additional expenditure of $20,000 per annum, with the likelihood of a further and substantial increase in the price of fuel in the near future.

5. An increase in the cost of supplies used by the company of from $75,000 to $100,000 per annum above the prices paid for similar quantities of such articles used during the current year.

6. The necessity of making some allowance to

the company's platform employees for time consumed in taking cars to and from car-barns, which will involve an additional payment of $91,250 per annum.

7. The need for setting aside a greater depreciation reserve than has been provided for, it having been previously shown that the cost of labor and materials used in maintenance and replacement work has increased 101% over the 1916 cost, and that if the depreciation appropriation for 1916 is increased by 101% and a reasonable depreciation allowance made on the capital additions since 1916, the depreciation reserve for 1920 will be $454,311 in excess of the Commission's estimate of $710,370 for 1919.

At the hearing upon this petition the petitioner produced its president, C. D. Emmons, as a witness to substantiate the statements of the company respecting the increased expenditures which it will be obliged to provide for during the ensuing year, as well as the need for a greater depreciation reserve, and Mr. Emmons introduced and filed with the Commission various exhibits in support of the claims of his company.

Some of these items of additional expense have already been encountered by the company, and the others are almost certain to be realized. It is impossible to foretell to what extent some of the items will still further increase, this having particular reference to the price of coal. We are all aware that a body appointed by the President of the United States is shortly to take up the question of the relations existing between the coal miners and the coal operators, and if as a result of this investigation the wages of the miners are again increased, the burden of such increase will in all probability come to be borne by the coal consuming public, including the petitioner.

The Commission is not prepared at this time to accept the claim of the railway company that its depreciation reserve should be increased in order to meet the increased cost of renewing and replacing property in kind. The contention of the railway company involves a distinct departure from the long established practice

with respect to the handling of this matter, the accounting rules of this Commission, as well as the accounting rules of most other regulatory bodies (so far as the Commission is informed) providing that the difference between the original cost and the cost of renewal or replacement, where such latter cost is higher, should be charged to capital account. But the Commission does not feel that it is necessary for it in the present proceedings to pass upon the broader question of depreciation which is presented by the company's petition. Nor does the Commission find that it is necessary for the purposes of this case to attempt to indicate what, in its judgment, would be the proper amounts, or even the maximum amounts, which the railway company should be permitted to expend for maintenance, and set aside as a depreciation reserve. The conditions surrounding the cost of both wages and material are too unsettled to warrant any conclusion which might be construed to be the adoption of anything like a fixed or permanent policy with reference to either maintenance or depreciation. But dealing with the present situation with which the railway is now confronted, the Commission finds that under existing conditions, which conditions are likely to continue at least during the ensuing year, the total amount which the company claims it will require for maintenance and depreciation does not appear to be unreasonable, when consideration is given to the amount of maintenance and renewal work now being done by the company, and which it will have to continue for a considerable period of time in order to get its property in condition to render the best possible service to the community which it serves; nor does such total allowance appear unreasonable when compared with similar allowances of other railway companies, such comparison being made on a car-mile basis.

As before shown, the balance to surplus after the payment of operating expenses, taxes and fixed charges during the months of October and November aggregated $55,115, and the December balance is estimated to be about $30,000, or about $85,000 for three months' operations at the present rate of fare. The increase in the tax rate, the higher conduit rental, the known increase in the price of coal, the increase in the cost of supplies, the

allowance to platform employees for time consumed in taking cars to and from car-barns, and additional fixed charges of approximately $120,000 per annum, when taken together, will be sufficient to reduce the balance to surplus likely to accrue during the ensuing year at the present rate of fare to an almost negligible amount, and unless there is a material increase in traffic, will be sufficient to wipe out completely any possible surplus. The company's balance to surplus during the current year will be $161,594, using the estimated figure of $30,000 for December. This is the lowest balance to surplus earned in any of the years since 1912, as shown by the following table:

BALANCE TO SURPLUS BY YEARS.

Year.	*Balance.*
1912	$678,042
1913	972,322
1914	819,368
1915	819,368
1916	1,108,124
1917	875,587
1918	332,652
1919	*161,594

* December estimated.

It is impracticable to attempt to project the earning for 1919 into 1920 on the basis of the balance to surplus shown for 1919, as the wage increase of August 17th, 1919, (involving an additional expenditure of over $800,000 per annum) and the present rate of fare, which became effective on October 1st, 1919, have been in effect for but a portion of the year. On the basis of the number of riders during the year 1919, the straight fare of seven cents will produce additional revenue over the present fare of seven cents each with 6½ cent tickets (90% tickets, 10% cash fares) of about $950,000 for the year, after deduction of Park Tax, and if there is an increase of 7% in the traffic of the company in the year the additional revenue produced by the increase in fare will be approximately $1,025,000, the true figure probably being somewhere between these two.

After full consideration of all of the facts which have

bearing on the matter, and having made a careful estimate of income and expenses for the ensuing year, the Commission is of the opinion that while the company might possibly be able to continue its operation on a rate of fare fractionally lower than the full increase now sought (though higher than the present rate of fare) the saving to the riding public through such fractional rate of fare would be very slight, while on the other hand it might prove to be the real balance between success and failure on the part of the company. Were the Commission to prescribe a rate of fare lower than that necessary to provide for the full reasonable needs of the company, the result might easily be that the company would again be compelled to struggle along as it has struggled since 1917; barely able to meet its pressing obligations, its credit impaired, and ultimately destroyed; unable to maintain its property or give the character of service rightfully and reasonably demanded by the public.

A tabulation of the difference in revenue obtained through the sale of fare checks at fractional fares shows that a reduction under the maximum fare of seven cents as slight as that obtained through the sale of eight fare checks for 55 cents, with only 70% of the riders availing themselves of the lower fare, would aggregate approximately $200,000 for the year, and to that extent cause a shortage in the balance to surplus of approximately $1,000,000 claimed by the company, and which balance the Commission has heretofore found to be reasonably necessary for the company's purposes.

The Commission has therefore concluded that the interests of the entire public will be served best by allowing the company to charge a rate of fare of seven cents, and its previous orders will be modified so as to permit such change to become effective on January 1st, 1920. The present fares for children, as well as the present commutation book rates, will remain unchanged. The Commission will require the railway company to continue furnishing monthly statements showing the results of its operations, so that the Commission will thereby be kept in close touch with the situation, and in a position to take any further action in the premises which may seem warranted.

The Commission has the assurance of the railway company that a straight fare of seven cents will enable it to meet its financial requirements, secure needed equipment, get its road-bed and equipment in good operating condition and meet every reasonable demand for adequate service, and the Commission in permitting the increase prayed for is taking the company at its word, and will require the company to fulfill promptly its promise of improved service.

An order will be passed in accordance with the conclusions herein.

ORDER NO. 5327.

Before the Public Service Commission of Maryland.

Case No. 1682.

In the Matter of the Petition of The United Railways and Electric Company of Baltimore for a Modification of Certain Orders, Now in Force, Fixing the Rates of Fare to be Charged by said Company, and for Permission to File, Publish and Put in Effect a New Schedule of Rates of Fare, Increasing Existing Rates, as Set Forth in This Petition.

Pursuant to the conclusions reached in the aforegoing opinion, it is, this 31st day of December, in the year nineteen hundred and nineteen, by the Public Service Commission of Maryland,

ORDERED: 1. That except as to paragraph (1) thereof, Order No. 5120 entered by this Commission on September 30th, 1919, as modified and amended by Order No. 5223 entered on November 29th, 1919, be and it is hereby annulled and rescinded.

2. That on and after January 1st, 1920, and until midnight of December 31st, 1920, and for no longer, unless such period be extended for a further period as hereinafter provided, or this order be earlier modified or abrogated by further order of this Commission, The United Railways and Electric Company of Baltimore shall be permitted to charge and collect for the transportation of persons over its several street railway lines, in Baltimore City and vicinity, the following rates, fares and charges, to-wit:

(a) Seven cents fare for the conveyance of each passenger over twelve years of age, and four cents for each child between the ages of four and twelve years, on any of its lines between the points designated under the first general caption in its schedule P. S. C. Md. No. 8, filed with this Commission August 28th, 1918, effective Octo-

ber 1st, 1918, or between intermediate points, in either direction, on any of such lines, except in the case of its Curtis Bay line, on which line The United Railways and Electric Company of Baltimore shall issue transfers entitling the holder of a continuous ride on such line as such transfers were issued on and prior to September 30th, 1918, except that the charge for such transfers shall be four cents instead of three cents, as theretofore.

(b) Full fare and half fare continuous trip tickets, good as fare on connecting lines, to be sold on the lines and between the points, on the Company's Gorsuch Avenue, East Monument Street (Orangeville), Third and Eighth Streets, Union Avenue, South Charles Streets, Walbrook-Hillsdale, Shore line and Ferry Bar lines, as designated in said schedule P. S. C. Md. No. 8, otherwise the regular fare to be collected between the points so designated.

(c) Four and one-half cents when paid by commutation tickets sold for use on the first county fare zone between the points so designated in the schedule P. S. C. Md. No. 8, aforesaid, and five cents when paid by commutation tickets sold for use on second and third county fare zones, between the points so designated in said schedule, said commutation tickets to be sold in the manner and subject to the conditions set forth in said schedule with respect thereto, the full fare in each of said cases otherwise to be paid.

(d) Four and one-half cents between Sparrows Point and Dundalk and four and one-half cents between Dundalk and Highlandtown when paid by employees' tickets from 20-trip books sold in lots to the Maryland Steel Company for distribution; five cents between Dundalk and Highlandtown and five cents between Highlandtown and city points, when paid by strip tickets sold in lots to the Central Foundry Company for distribution; and two and one-half cents on the Lakeside line when paid by tickets from 200-trip books sold to the landowners along such line, all such tickets to be subject to the conditions printed thereon and to the rules of the Company governing the use thereof, the full fare in each of said cases otherwise to be paid.

3. That from and after the hour of midnight on the 31st of December, 1920, said company's right and privilege to charge and collect the increased fares authorized hereby shall cease and determine and said company shall thereupon put in force and effect, and maintain until thereafter lawfully changed, the schedule of fares operative on the 31st of December, 1919, unless this Commission or other lawful authority shall in the meantime have modified, extended or superseded this order; provided, however, that if this order has not been so extended or superseded, and there shall be pending on December 31st, 1920, an application by said company filed before November 30th, 1920, for a continuance in whole or in part of the relief hereby granted or for increased fares, then the right to collect the fares authorized by this order shall continue until the determination by the Commission of said pending proceedings; and provided, further, that in case of any proceeding hereafter instituted before the 31st day of December, 1920, for the right to charge and collect fares in excess of those in effect on the 31st of December, 1919, the burden of proving the reasonableness of any such excess fare shall be and remain on said company; provided, however, that nothing in this order shall be held to affect in any way the right of the company to proceed with the pending valuation to which said company is a party or its right of appeal from the finding or orders growing out of said valuation proceedings.

4. That The United Railways and Electric Company of Baltimore shall furnish to this Commission accurate and complete statements under oath, and in convenient form, setting forth the number of revenue and transfer passengers carried, and the number of car-miles operated, the cash receipts from operation and other sources, and the operating and other expenditures of the Company, all set forth in the manner prescribed by the rules of this Commission for accounting by street railway companies, so soon as may be reasonably practicable and convenient after the end of each calendar month during the period this Order remains effective, and in no event later than the last day of the next succeeding calendar month, covering the operations of the Company during the next preceding month.

5. That the right of the respondent Company to charge and collect the fares in this order prescribed shall be held subject at all times during the period covered by such order, or any extension thereof which may hereafter be granted as aforesaid, to the right and power of this Commission to reopen this case in the light of the facts disclosed by the monthly reports aforesaid, or of other facts otherwise coming to the attention of this Commission, and modify the rates of fare by this order authorized to be charged and collected by the respondent Company.

And it is FURTHER ORDERED: That a copy of this order be forthwith served upon the proper officers of the respondent, The United Railways and Electric Company of Baltimore, and that said company, within ten days from the date of the service of such copy, advise this Commission in writing whether or not it will accept and abide by the same.

JNO. MILTON REIFSNIDER,

JAMES C. LEGG,

J. FRANK HARPER,

Commissioners.

(E)

CASE NO. 1682, OPINION FILED MAY 26, 1924, AND ORDER NO. 8240.

PUBLIC SERVICE COMMISSION OF MARYLAND.

OPINION.

Before The Public Service Commission of Maryland.

Case No. 1682.

In the Matter of the Petition of The United Railways and Electric Company of Baltimore for a Modification of Certain Orders Now in Force Fixing the Rates To Be Charged By Said Company and For Permission to File, Publish and Put Into Effect a New Schedule of Rates as Set Forth in this Petition.

Appearances:

William Milnes Maloy, Esq., People's Counsel.

Charles C. Wallace, Esq., Assistant City Solicitor, for the Mayor and City Council of Baltimore.

Linwood L. Clark, Esq., representing the New Annex League and the Back and Middle River and Sparrows Point and Bay Shore Communities.

John L. G. Lee, Esq., representing Menlo Park, on the Park Heights Avenue Line.

Laurie H. Riggs, Esq., representing owners of property west of Rolling Road, on the Ellicott City Line.

John E. Dempster, Esq., representing the Sixteenth Ward Republican League.

Mr. Howard C. Price, representing petitioners using the Sparrows Point Line.

Joseph C. France, Esq., and William H. Maltbie, Esq., representing The United Railways and Electric Company of Baltimore.

By the Commission. Filed May 26th, 1924.

This is an application of The United Railways and Electric Company of Baltimore for an increase in fare in order that it may meet the growing transportation needs of the city, remedy certain inequalities in the service now being given, and earn a sufficient net revenue for the protection and preservation of its credit.

This application was filed with the Commission on March 31st. After reviewing the various proceedings before the Commission concerning the rates of fare, and referring to certain changes affecting the cost of furnishing the transportation service which have occurred since the present rates of fare were established, it concludes as follows:

"Your petitioner therefore prays that your Honorable Commission will investigate the matters and facts set forth in this petition, together with any other matters and facts which may be relevant or pertinent thereto, and that thereafter your Honorable Commission will fix and determine a schedule of fares and charges to be collected by your petitioner in such a way as to yield your petitioner an adequate return upon the value of its property or, if your Honorable Commission does not desire to make a valuation of the property of your petitioner at this time, such rates and charges as will yield your petitioner the net income of $1,500,000 which your Honorable Commission has declared to be reasonable and necessary and in the interest of the public, your petitioner believing and averring that it has exercised all possible diligence to secure said earnings by economy and efficiency of operation but has found it to be impossible to reach said earnings or even to reach the estimated earnings of $1,000,000 under the rates and charges permitted under the present order of your Honorable Commission.

> And further prays that, pending such final action and order, your Honorable Commission will continue in effect the relief heretofore granted and the rates and charges now in force."

In the opinion of the Commission, the Company was unfortunate in the manner in which it framed its petition. Instead of frankly stating its case and asking the relief to which it believed itself to be entitled, with the reasons therefore, it couched its request in ambiguous terms, the meaning of which was misleading to the public. The Company in its petition created the impression that it would be satisfied with a continuation of the seven cent fare provided no extensions of zones or improvements in service would be required, and that the rate of fare which it would need would be entirely dependent upon the number of extensions and improvements that would be required of it.

At the time the petition was submitted in this form, the Company knew it would not be satisfied with a seven cent fare, and its officials were convinced that the prospects of its earning enough to continue the existing service with no zone extensions or improvements whatever, and to maintain its credit, on that rate, were doubtful. That this conclusion is correct was shown in the course of the hearing, by flat statement of counsel and the testimony of C. D. Emmons, president of the Company, to the effect that the Company actually needed an increase of fare, and that in case an order should be passed continuing the seven cent fare pending a valuation of its property and the granting of a rate of fare based thereon, the Company would be compelled to make out another case before the Commission for an increased rate as emergency relief.

To this initial lack of frankness on the part of the Company is due, in the Commission's opinion, the public resentment with which the definite announcement of its needs were later received.

Even under favorable prospects for 1924, with a normal increase in riding in Baltimore, it is clear to the Commission that, with the seven cent fare maintained, the Company could make no zone extensions or other ser-

vice improvements, maintain its property and preserve its credit. The problem facing the Commission therefore is this:

Will the public be better served by continuing the present rate of fare with no zone extensions or service improvements, with the possibility of a further cut in service, or

Will it be better served by increasing the fare and securing the extensions and other things that can be secured only by an increase in fare.

Of one thing the public must be convinced. It must make up its mind to pay the cost of the service it receives. There is no magic in the operation of a street car system or any other utility that enables it to dodge the economic laws that affect the individual. When the Company has to pay twice as much for labor, and almost twice as much for everything else it uses, in producing a street car ride, it cannot sell its product at the price prevailing before its costs increased, any more than the individual can sell his labor at the prices prevailing before the startling increases in the cost of living, brought on by the war. The fact that the increase in cost to the user of street car transportation in Baltimore thus far has been only 40 per cent, while the operating costs of the railway Company have increased from $4,102,766 in 1915 to $9,799,312, in 1923, or more than double, and taxes have increased from $904,675 to $1,800,335, while costs in substantially all non-regulated commodities and service have increased from at least 50 per cent to 200 per cent, should indicate to the public the value it receives from the regulation of utilities.

Even a superficial examination of the figures should convince any reasonable man of the absurdity of the agitation for a return of the five cent fare at this time, or for any marked reduction in the present rate. Such agitation is either dishonest or is ignorant. A reduction in the rate of fare of from ½ to ¾ of a cent at this time would result, in the opinion of the Commission, in a receivership for the Company with all the disastrous results to the public that a receivership would bring about. Furthermore a material reduction in the fare rate would,

we believe, raise the question of confiscation of property without due return, which is prohibited by the Constitution and which the courts forbid.

It is not to be expected that the average citizen can acquaint himself with all the complexities involved in determining a just rate of fare, and he is not to be blamed when he forms his opinion from the statements of those who are supposed to know the truth, and whose business it is to find out the truth. But there is no excuse for those who know, or who, with reasonable diligence, can learn the exact truth of the situation when they attempt to mislead the public into believing it can get its street car rides for less than cost of production.

Many comparisons have been made, before, during and since the hearing, between the rates of fare paid in Baltimore and those paid in other cities. No just conclusions can be drawn from such comparisons because conditions in no two cities are fairly comparable. New York has a five cent fare, and incidentally the cost of giving a ride on the New York subways is estimated to be 7.31 cents, the taxpayers and investors losing the difference above the five cent rate. Cleveland has a six cent fare, with a charge for transfers which yields more than a million dollars a year in revenue. Baltimore has a seven cent fare, and pays more than a million dollars a year out of it for the support of the parks. Wilmington has an eight cent fare, Cincinnati has one of nine cents. Boston and Pittsburgh have ten cent fares. Chicago has a ten cent cash fare on its elevated and a seven cent cash fare on its surface lines, and so on. The fact that considerably more than 100 cities throughout the country have a base fare of ten cents is no reason why Baltimore should have a ten cent fare any more than that these cities should have the rate prevailing here, and the fact that other cities have a fare of five cents is no reason why Baltimore should have it.

Municipal requirements, municipal assistance, as in New York and Detroit, municipal guarantees, as in Cleveland, speed at which cars can operate through the streets, wages, length of haul, density of traffic, credit which determines the rate of interest the Company must pay on

the money it borrows and the extent of automobile and bus competition, are only some of the things which affect the rate of fare and which are seldom alike in any two cities. The local situation in every case must be studied and the conclusion be based only on the conditions found in each city.

The income of the United Railways Company depends upon two factors; the number of revenue passengers carried and the average fare. It has no other sources of large income, such as many other companies possess. With a city growing, as Baltimore is, an increase in the number of passengers carried each year would be expected. From the year 1909 until 1920 this was always the case with the exception of one year, 1915, in which fewer passengers were carried than in 1914. There was a sharp decline from 1920 to 1921 and a further decline in the number of revenue passengers carried in 1922. In 1923 there was a slight gain, a little over 2 per cent. The average gain for the years 1909 to 1920 was over 5 per cent a year. The following table gives the revenue passengers carried from 1909 to 1923:

Year	Revenue Passengers	Percentage of Increase
1909	145,601,990	
1910	154,925,785	6.40 per cent.
1911	161,467,727	4.22 " "
1912	172,283,341	6.67 " "
1913	182,180,767	5.76 " "
1914	185,296,350	1.71 " "
1915	181,744,023	— 1.92 " "
1916	199,158,285	9.58 " "
1917	212,893,619	6.90 " "
1918	226,834,528	6.55 " "
1919	243,890,966	6.80 " "
1920	253,934,179	4.11 " "
1921	238,090,980	— 6.24 " "
1922	233,732,146	— 1.68 " "
1923	238,658,390	2.11 " "

— Shows decrease.

The number of revenue passengers for the first four months of this year as compared with the corresponding months of 1923, according to figures submitted at the hearing, are as follows:

	1923	1924	Percentage of Increase
January	19,708,809	19,921,834	1.0800 per cent.
*February ...	17,770,508	18,588,563	4.6034 " "
March	20,680,781	20,162,742	—2.5049 " "
April	19,907,818	19,962,838	0.2764 " "
	78,067,916	78,635,977	

(* Large increase due to the one extra day in this month.)

These figures show there has been substantially the same amount of riding as there was last year and do not indicate that there will be any marked increase in the remaining months. The Commission, in its opinion of September 30, 1919, in discussing the increase in car riding during that year, said:

"This fact is unquestionably due to the more pronounced prosperity and business activity of the community following the cessation of hostilities. . . .."

This prosperity continued through the greater part of 1920 and the slump in business came in the latter part of that year with a consequent falling off of passengers from 253,934,179 in 1920 to 238,090,980 in 1921, and a still further falling off in 1922 to 233,732,146. A slight gain in 1923 brought the number of revenue passengers back to 238,658,380.

What are the causes that have operated to decrease the number of passengers riding on the United Railways so that in 1923 there were over fifteen million revenue passengers less than were carried in 1920?

It has been argued that the increased fare was responsible to a large extent. During 1919 there were two raises of the car fare, first to 6 cents and then to 6½ cents, and yet the riding increased during that year 6.8 per cent. The 7 cent fare went into effect on the first of January, 1920, and in that year the Railway Company

carried the greatest number of passengers in its history. The increased fares during 1919 and 1920 had very little effect in reducing the number of revenue passengers.

The reasons for the subsequent decreases in riding seem to be these:

First: The business depression beginning about the middle of the year 1920 unquestionably had a great deal to do with the falling off in the number of car riders. A number of plants on the outskirts of the City employing tens of thousands of men practically ceased operations and those that continued did so with greatly reduced forces.

Second: Another important factor in reducing the passengers on the street railway has been the remarkable increase in the number of automobiles. Figures are not available for Baltimore City separately, but the following table shows that for the State of Maryland the number of automobile licenses issued for the years 1918 to 1923, inclusive, has more than doubled.

1918	85,548
1919	105,689
1920	128,230
1921	148,419
1922	177,722
1923	217,393

It is reasonable to assume that what is true for the State as a whole is true for Baltimore, and that the increase in the number of automobiles in Baltimore is certainly not less than in the counties. Moreover, the effect of the automobile, besides decreasing the number of car riders, is widely to extend the residence districts, so that those who do use the street cars must be carried greater distances at corresponding greater costs to the Company. This, while a splendid thing for the City, increases the Company's expenses, and complicates its problems.

OPERATING EXPENSES.

The maintenance estimate of the Company for 1924 is increased by $25,760 due to increase in labor costs. The power service shows an increase from $1,312,621 to $1,-

315,081, or $2,460, also due to increased labor costs. Platform labor has increased from $3,995,475 to $4,075,385, or $79,910. Other transportation expenses are increased from $1,069,610 to $1,089,110, or an increase due to labor of $19,500.

The sum of $567,967 set aside for accidents and damages, is the same for 1924 as it was in 1923. In 1923 it was originally estimated that the amount required for this item would be $649,944. The Company's accident record during the year was kept down by a special Safety Drive and the Company felt justified in reducing the reserve for accidents and damages from 4 per cent to 3½ per cent of its gross receipts. This was testified to be one of the lowest reserves for this purpose of any large Company in the Country. The general miscellaneous item was increased, due to increased labor costs, by $8,500, from $865,286 to $873,786. The total operating expenses due to increased labor costs of $136,276 shows that if there is no increase in the car riding, these costs will increase from $9,799,312 in 1923 to $9,935,588 in 1924.

TAXES.

In 1923 the Company paid in taxes the sum of $1,800,335. The greatest single item of these taxes which the people have to pay through their car fares is the Park Tax. In 1923 this amounted to $1,130,913, or almost exactly one-half cent on each fare. In addition to this large percentage of gross receipts paid directly into the Park Fund, the Company also pays taxes to the City, County and State on its real estate. It is also required by law to pave between its tracks and for two feet on either side thereof and keep such paving in repair.

Special forms of taxation such as the Park Tax, paving requirements and the like, were all adopted before the days of regulation and at a time when it was assumed that what the municipality received in this way came out of profits which the stockholders otherwise would have received. In any system of regulation where the effort is to fix the charges made by public utilities in almost exact proportion to the actual cost of the service rendered, all of these taxes form a part of such cost, with

the result that the people who ride on the cars, must pay them in their car fares.

The other taxes, excepting the Park Tax and the Federal Income Tax, are estimated for 1924 to be the same as for 1923, or $521,923. The Federal Income Tax, it is estimated by the Company, with no increase in car riders, will be $39,402 less than in 1923, or $108,098. The reason for this decrease is that owing to the increase of labor and other expenses the net income of the Company for 1924, it is estimated, will be $219,579 less than in 1923, the Federal Income Tax being based on the net income of the Company.

DEPRECIATION.

The depreciation fund for 1924 is figured the same as the depreciation for 1923. It was testified in the case, however, that the depreciation reserve during the past four years had been expended in the retirement of worn out or obsolete property more rapidly than it had been provided. This is shown in exhibit No. 6, as follows:

JANUARY 1, 1920, TO JANUARY 1, 1924.

Year	Reserve Provided	Reserve Expended
1920	$865,679.94	$764,476.38
1921	816,643.27	1,139,769.25
1922	806,129.60	755,088.32
1923	823,089.94	744,948.56
	$3,311,542.75	$3,404,282.51

It was further testified that no part of the reserve expended was for the purpose of retiring cars; that the Company had, all told, 1930 cars including work cars, fifty of which should be retired each year. The Company declared it has not had sufficient depreciation reserve and testified that as it had not retired any cars during the past four years, it required an annual increase in the depreciation reserve of approximately $400,000 for this purpose.

Touching briefly on other features of the case it may be said that the Company's estimate of the gross income

for 1924 as compared with 1923 would be $116,903 less, or $4,072,187. This is before payment of fixed charges, dividends or any credit to surplus. The Fixed Charges for 1924 will be $92,676 more than in 1923, due to the interest charges on the recent issue of $4,000,000 of the bonds of the Maryland Electric Railways Company. This will make the 1924 Fixed Charges $3,315,500, and would give a net income for 1924 of $756,687 as compared with $976,206 in 1923.

EXTENSION OF ZONES.

Applications have been made for the extension of zones on all the lines operating in the City to the new City limits. These applications include:

Riverview line to be extended from Fifteenth Street and Eastern Avenue to Dundalk Junction. This would include the Canton section and the Riverview, St. Helena and Dundalk sections in the City zone.

The Sparrows Point and Bay Shore line patrons request that the City zone be extended from Fifteenth Street and Eastern Avenue to Dundalk Junction, the same point where it is desired to extend the Riverview line.

The Back River and Middle River line patrons request that this line be extended from Fifteenth Street and Eastern Avenue to the City limits. It has further been requested that the second zone be extended to Mace Avenue so as to take in the community of Essex, and also to wipe out the third zone entirely.

It has been requested that the one fare zone on the Harford Avenue line be extended from Hamilton to the City line.

Residents along the Pikesville line request that their City zone be extended from Rogers Avenue to Slade Avenue at the City line.

The request is also before the Commission to eliminate the 3 cent transfer charge on the Curtis Bay line.

COST OF ZONE EXTENSIONS.

It has been estimated by the Company that the cost of making these extensions of zones would be as follows:

Pikesville	$25,324
Readjustment of zones beyond Slade Avenue	15,228
Riverview-Dundalk	36,568
Back River line extension from the first zone to the City limits	35,158
Extension of the second fare zone from Back River to Mace Avenue in Essex	27,648
If the third zone on the Back River line were eliminated altogether it is estimated that the loss to the Company would be	95,055
Sparrows Point-Bay Shore line, zone extension	260,459
Curtis Bay elimination of the 3 cent transfer charge	69,164
Harford Avenue line extension	19,082

The cost of extending the first fare zones on all the lines to the City limits and eliminating the Curtis Bay transfer charge would be $426,673, and if all the requests made to the Company were put into effect, the additional cost would be $190,429, making a grand total of $617,102.

LOWER RATES FOR SCHOOL CHILDREN.

The Company, through its president, during the hearing, offered to give to the school children of Baltimore, over twelve (12) years of age, a special rate of five cents if its petition for a higher fare should be granted. The Company recognizes the fact that car fares become a burden to a family having a number of children over 12 years of age going to school. For each child in the family on the basis of a 7½ cent fare, there would be a saving of 25 cents per week. The saving with the present 7 cent fare would be 20 cents per week.

EFFECT OF THESE CHANGES ON RAILWAY'S INCOME

The Net Income of the United Railways & Electric Company in 1923 was $976,266. If all that has been requested of the United Railways should be done, the fol-

lowing expenditures would have to be made over and above those for 1923:

Extensions of zones and other readjustments....	$617,102
Increased labor charges and other expenses.....	258,705
The five cent fare to school children over twelve years of age	100,000
Total.....	$975,807

The difference between this sum and the net profit earned by the Railways Company last year is $459. This amount would be increased by deductions from the Federal Income Tax paid last year, as such taxes are paid only on the net income. The total net profit would be approximately, $130,000. The effect of such a reduction of its income would make it impossible for the Company to secure any money for improvements, new cars, or extensions of any kind. The Commission does not believe that it is possible to require any of the above listed expenditures with the car fare remaining at 7 cents.

EFFECT OF A 7½ CENT FARE

The Company presented an exhibit showing that if an 8 cent fare with two tokens for 15 cents were established it would secure increased receipts of $1,168,212. With such an increase in receipts, the Company said it would be able to carry out the following improvements:

Extension of all zones to the City lines and elimination of Curtis Bay transfer.....	$426,673	
Readjustment of zones on Pikesville line outside of the City	15,228	
Extension of the first fare zone of the Harford Road line on the tracks of the old Baltimore and Belair line to the City limits.....	19,082	
Five cent fare for school children over 12 years of age	100,000	
Extension of second fare zone on Back River line to Mace Avenue in Essex	27,648	
		$588,631
To which would be added:		
Increased labor costs, fixed charges, etc.....	$258,705	
Increased Taxes	115,000	
		373,705
Making a total of.....		$962,336

That is, out of the increased revenues of the United Railways of $1,168,212 which the increased fare would give, the Company would be immediately required to expend $962,336 and the net increase which would go into the surplus account of the Company would be $205,876, which, added to the surplus earned last year, $976,266, would give a surplus of $1,182,142, without making any allowance for increased depreciation for the retirement of cars, which the Company claims should be $400,000 a year.

WHY THE UNITED RAILWAYS NEEDS INCREASED REVENUE

It is the general impression that if the Company gets an increase of ½ cent in its fare it will receive the full benefit of this increase.

As a matter of fact, it is not anticipated that the stockholders will get one cent additional in dividends and as the rate of interest on the bonds is fixed by the terms of the bonds themselves, the bondholders cannot get any of the increase. The salaries of the managing and operating officials are fixed, and as far as the Commission is informed, no increases in the salaries of officials would be made as a result of the increased fare.

For what purpose, then, would the Company need the increase in gross revenues which an increased fare would yield?

It needs money in order to extend first fare zones on all lines to the City limits. That this is and has been considered by the Commission a desirable thing to do, is evidenced by its action during the past several years in forcing extension of fare zones either to or toward the City limits wherever the Commission has felt that the Company could possibly afford to make such extensions. Last year these included extensions to the City limits on the Halethorpe line, the Catonsville line, the Edmondson Avenue line, the York Road line and an extension from Pimlico to Rogers Avenue on the Pikesville line. It has been the policy of the Commission to extend these zones as rapidly as possible in order to wipe out inequalities in the length of the ride.

The grossest inequality which exists, however, is in connection with the three car lines going to River View, Sparrows Point, and Back and Middle Rivers. The length of the ride from the center of the City to the end of the first zone on these three lines is three miles. The length of the ride on the Belair Road, Harford Road, York Road, Roland Park, Mount Washington, Pikesville, Gwynn Oak, Hillsdale, Edmondson Avenue and the Frederick Road or Catonsville lines, is in each case over five miles from the center of the City and on some of them it is possible to ride over eight miles for one fare. If the 3 cent transfer charge on the Curtis Bay line—South Baltimore—were to be eliminated, the length of ride from the center of the City will be only five miles. It will thus be seen that the eastern and southern sections of Baltimore City, as compared with the northeastern, northern, northwestern and western parts of the City are discriminated against.

This situation is brought about by the fact that at the time of the annexation of 1888, the Highlandtown and Canton district refused to come into the City. When the fare limits were extended to the old City limits by the annexation act, this district got no fare zone extension benefits. For six years now this eastern section has been within the City limits and in the Canton district there are tracts of land available for industries with excellent railroad connections and water facilities. It has been stated to the Commission that industries hesitate, and in some instances refuse to settle in this district, because the employees of the plants would be compelled to pay two car fares to get to and from their work, although the ride would not exceed two miles for those living in the neighborhood of Patterson Park.

The Company also requires money for the maintenance of its credit. This is one of the most important of all the reasons why it needs increased revenue. Without credit, it cannot command the investment of new money in its property to meet the constantly expanding demands of the people for transportation facilities. This Commission in its opinion in the six cent fare case made this declaration:

"A State regulatory body could do no greater

harm to a community so entirely dependent upon the service of a street railway company as the public of Baltimore is dependent upon the service of the respondent Company than to refuse to permit it to charge such rates for its service as will enable it at all times both to command the investment of money necessary for the making of required extensions and continued maintenance of its property in efficient condition, and also to render such character of service as the needs of the community reasonably require. So to refuse would not only be to render it physically impossible for the Company to render adequate service, but would also be to drive the Company itself into a position of pecuniary decrepitude which would in the end result in bankruptcy and dissolution, after a long-drawn-out period of such inadequate service, during which the property and equipment would fall into a condition of disrepair which could only be corrected after the lapse of many years and the expenditure of many millions of dollars."

In the 6½ cent fare case in 1919, the Commission declared its conviction that in order properly to serve the public and maintain its credit, the Company ought to be allowed to earn a net surplus of approximately $1,000,000. It fixed a rate that it thought would yield the Company a net return of $1,000,000 and at the same time informed the Company that by diligent, sensible economies and good service, it ought to be able to increase this amount to $1,500,000. The Commission also declared:

"But in fixing $1,000,000 as the minimum balance to surplus which the Company should be permitted to earn under existing conditions, this Commission is not to be understood as undertaking to guarantee such balance to surplus at the expense of the public at any and all hazards."

In the course of the hearing just ended, the Company gave a list of the economies which it has effected during the past four years in the hope of increasing its net return to $1,500,000. These show a saving of approximately $1,000,000. Its officials also testified that since

1919 the following increased expenses beyond their control have taken place: Increased cost of labor, $136,000 running more car miles for few passengers, $475,000; increased power costs, $110,000; extension of zones, $160,000; increased fixed charges, $95,000; making a total of $976,000. In addition to this, the Company, in order to give better service, has installed unprofitable bus lines on Mount Royal Avenue and on Bentalou Street. It has also put in a trackless trolley on Liberty Heights Road, which has been operated at a considerable loss since its beginning. The loss on these bus lines and on the trackless trolley would unquestionably bring the increased expenses of the Company well over $1,000,000 and counter-balance any economies which the Company may have effected.

CONCLUSIONS

From the testimony submitted at the hearing and the additional information which the Commission has secured as the result of the investigations of its own staff, it has reached the following conclusions:

FIRST—There is nothing to indicate there will be any increase in the number of revenue passengers during 1924 over the number of such passengers in 1923. Therefore, there is no reason to believe that the income of the Company will be increased because of a greater number of riders. The failure of the Company to secure an increased number of riders, is very largely due, in the Commission's opinion, to the increased use of the automobile. The number of licensed automobiles in the State has increased in the last four years from 105,689 to 217,393. The constantly increasing use of automobiles will unquestionably tend to make those who must use the street cars pay a higher rate of fare. Anything that is done to decrease the number of riders on the railway will necessarily react to increase per rider the costs of maintenance and operation of the system, and under regulation where the fare is based almost wholly on these costs, the result of a decrease in the number of riders is to increase the fare of those who must continue to ride.

SECOND—There is no testimony which would lead the Commission to believe that the operating expenses of

the Company will be decreased unless the service it cut to a greater extent than it has already been cut. In fact, owing to the increased labor costs, the expenses for operation and maintenance will be $136,000 more in 1924 than was the case in 1923. The fixed charges in 1924 will be $92,676 more than in 1923.

THIRD—The Company has spent all the money set aside in the last four years for depreciation, in the replacement of tracks and structures and has made no retirements of cars. The Company is claiming at least $400,000 more for depreciation on its cars. Without attempting to say what allowance, if any, should be made for this specific purpose, we are convinced that the Company's depreciation allowance should be sufficient to permit it to retire a number of cars each year.

FOURTH—The Company estimates that its income for 1924 will be $756,687, or $219,579 less than it was in 1923 if the 7 cent fare is maintained. In order to increase this income so as to approximate the $1,000,000, which we believe is necessary properly to maintain the credit position of the Company, it would be necessary to make drastic cuts in the present service.

FIFTH—We unanimously agree that it would be impossible to require the Company to extend the fare zones to the city limits, eliminate the 3 cent transfer charge on the Curtis Bay line, adjust the county zones or give a reduced fare of 5 cents for school children over 12 years of age, if the 7 cent fare is maintained.

SIXTH—On the basis of an eight cent single fare or two tokens for 15 cents, the gross income of the Company, it is estimated, would be increased by $1,168,212. From this would be taken $588,631 for zone extensions and readjustments, and reduced fares for school children, and $373,705 for increased labor costs, taxes and fixed charges. This would leave the Company but $206,876 of the increased fare. This sum, added to $976,266 net income in 1923 before payment of dividends, would bring the net income for 1924 to $1,182,142. This would make the gross income of the Company approximately one and one-third times its fixed charges.

SEVENTH—It is our judgment that the best interests

of Baltimore require that all fare zones within the City should be extended to the City limits, that the three cent transfer charge to Curtis Bay should be eliminated and that a five cent fare for school children over twelve years of age should be granted. The residents of the eastern and southeastern sections of the City at present can ride only three miles from the center of the City for one fare, while in practically all other sections it is possible to ride from five to eight miles within one fare zones. This section of the City has been included within the City limits for six years and we believe the inequalities of riding in all justice and fairness should be eliminated. A large section of the City well served with railroads and with fine water frontage, ideally situated for industrial development is retarded in its development because of the two fares which must be paid to reach it by residents of the City who would naturally find employment there. The same arguments regarding the new annex south of the Patapsco apply both as regards to residents of that district and its industrial development with relation to the three cent transfer charge on the Curtis Bay line.

EIGHTH—In the 1919 fare case, the Commission said, that the physical valuation of the United Railways and Electric Company, "would be of little or no worth for rate making purposes at this time of abnormal property values and abnormal operating conditions." We believe that objection to a valuation no longer holds. During the last three years prices have remained fairly stable and, although on a plane considerably higher than existed before the war, there is nothing to indicate that there will be any material change within the next few years. We therefore conclude that the property of the United Railways should be valued for rate making purposes and that when the rate is fixed for 1925, it should be based upon the fair valuation of the Company's property used and useful in the public service. Therefore such a valuation will be ordered.

NINTH—While we realize that the Company is not in danger of being forced into a receivership if there is no increase in fares, it is our belief that the increased labor costs and interests charges for money recently put into the property will decrease the net income of the Com-

pany considerably below that of last year. It is our conclusion that such a result will mean stagnation in the affairs of the Company by making it difficult, if not impossible, to induce investors to provide money for any improvements or extensions in its tracks or structures or to purchase new and modern types of cars.

TENTH—Believing the benefits to be derived by the public by allowing the Company to collect an additional one-half cent on its base rate of fare, and requiring the expenditure of the bulk of what this increase will yield in gross revenue to the extensions of zones, reduced fare for school children and other requirements for the general good, far outweigh the disadvantage of such increase with the small burden it puts on the individual rider, this Commission will order that the rate of fare shall be increased from seven cents to eight cents for a single fare, with two tokens for fifteen cents.

It should be borne in mind that the Commission has no intention of allowing the Company to earn under this rate a net revenue more than sufficient to maintain its credit and give adequate service to the community. If the net revenue of the Company should exceed such an amount, the Commission will see to it that such excess is returned to the people either by a reduction in the rate of fare, or by its absorbtion in the giving of additional service.

The order will provide for the extension of zones, a five cent fare for school children over 12 years of age and other improvements which the Commission has hereinbefore indicated should be made. It will also direct the completion of the valuation proceedings inaugurated by this Commission in 1912, but because of conditions previously referred to in this opinion, never concluded.

The new rates will continue for eleven months from May 31, 1924, with the provision that if there should be pending before this Commission on April 30, 1925, these valuation proceedings, or any other proceedings affecting the rate of fare, the rates established by this opinion and its accompanying order shall be continued until the

determination by the Commission of the said pending proceedings.

An order will be entered in accordance with the conclusions herein.

Public Service Commission of Maryland, Chairman Whitman and Commissioner West.

DISSENTING OPINION

Before the Public Service Commission of Maryland.

Case No. 1682.

In the Matter of the Petition of The United Railways and Electric Company of Baltimore for a Modification of Certain Orders Now in Force Fixing the Rates of Fare to be Charged by said Company and for Permission to File, Publish and Put into Effect a New Schedule of Rates as Set Forth in This Petition.

HARPER, Commissioner (dissenting):

I regret that I cannot concur in the conclusion reached by my colleagues that The United Railways and Electric Company of Baltimore should be permitted to charge a higher rate of fare.

The rate of fare should not be increased unless the right of the Company to such increase is shown to be clear and conclusive. If the results of the operations of the Company under the seven cent fare during the year 1923 and the first three months of 1924, considered in connection with the facts developed at the hearing relative to the probable future volume of traffic and cost of operation, fairly indicate that the revenue to be derived may reasonably be anticipated to yield a balance to surplus substantially equal to the amount which this Commission has said it was entitled to earn, an increase in fare is not justified. The evidence in this case shows that in 1923 the Company did earn substantially such a balance to surplus, and in my judgment it may reasonably be expected to earn in 1924 a balance approximately equal thereto in amount under the present rate of fare.

On July 19th, 1918, the Company made its first application to the Commission for authority to increase the fare. In that case, known as the Six Cent Fare Case, it

was shown that from the year 1912 to the year 1917, inclusive, the average net earnings of the Company, after the payment of operating and maintenance costs, depreciation, taxes and fixed charges, had been $848,802. It was claimed that by reason of the higher wage scales then prevailing, the continuance of the then existing five cent fare would result in a deficit of $2,163,057 for that year, as compared with the pre-war period. The six cent fare was authorized, it being estimated that the additional one cent would result in an increased total revenue which would amount to but a few thousand dollars more than sufficient to pay the Company's operating and maintenance expenses, taxes, fixed charges and yield the average annual pre-war surplus of $848,802. The Company in its petition stated that "it is not intended that any part of the increased revenue hereby sought should increase the margin of profit which the Company had heretofore earned." And in a later opinion this Commission has said that it did not, in its opinion in the Six Cent Fare Care, "commit itself absolutely to the proposition that the Company should be permitted at all hazards increases in fares sufficient to yield its full and exact pre-war surplus."

On May 23rd, 1919, the Company made its second application for an increase in fare. In the supplemental opinion filed in that case, the Commission stated that it was its view "that the rates of fare authorized to be charged by the Company should be such as may reasonably be anticipated to yield a balance to surplus of approximately one million dollars ($1,000,000) after the payment of the Company's operating expenses, taxes, fixed charges, and the making of reasonable allowances for the maintenance of the property and of its accident and depreciation reserves."

The Commission further said:

> "But in fixing $1,000,000 as the minimum balance to surplus which the Company should be permitted to earn under existing conditions, this Commission is not to be understood as undertaking to guarantee such balance to surplus at the expense of the public at any and all hazards."

During the years 1912 to 1917, the balance to surplus earned, and which balance the Company, in its petition in the 1918 case above referred to, stated that it was not intended should be increased by the additional revenues thereby sought, was as follows:

Year	Balance to Surplus
1912	$678,042
1913	792,322
1914	819,368
1915	819,368
1916	1,108,124
1917	875,587

Average annual balance for the years under the five cent fare, $848,802.

On January 1, 1920, the seven cent fare became effective, since which time the annual balance to surplus has been as follows:

Year	Balance to Surplus
1920	$1,043,599
1921	635,231
1922	799,269
1923	976,266

Average annual balance for the above years under the seven cent fare, $863,591.

Excluding the years 1918 and 1919, which covered the period of rate revisions, the average annual balance to surplus from 1912 to 1923, inclusive, amounted to the sum of $854,717.

It also will be seen that there has not only been a steady though moderate increase in the net income since 1921, but that with the exception of two years 1916 and 1920, the Company earned a larger balance to surplus in 1923 than in any previous year. Furthermore, certain extensions of fare zones were made in 1922 and 1923 which the Company estimated would result in a loss of $160,000 in revenue, so that in addition to absorbing this loss the net income from $635,231 in 1921 to $976,266 in 1923.

While the Company claimed at the hearing that there would be an increase of $136,276 in the operating costs in 1924 by reason of the increased wage scale which became effective January 1st last and that there would also be an addition of $92,676 to the amount of the fixed charges, yet it is reasonable to expect that these additional costs and charges will be made up by the revenue received through an increased volume of traffic. In a large city such as Baltimore, with its steady growth in population and suburban development and its constantly expanding commercial and industrial activities, it is to be expected that the number of car riders will increase. New traffic and parking regulations applicable to the congested center of the city should prove helpful, if not by way of additional passenger revenue at least by enabling the Company to bring about a material saving in the cost of operation. The first three months of 1924 have shown an increase of $19,535 in the net earnings of the Company over the corresponding months of 1923. While the increase is partly attributable to the receipts from the extra day's operations in February of this year, this was fully offset by the higher wages paid under the new wage cale which went into effect on January 1st last.

A careful consideration of all the factors upon which a reasonable judgment may be based as to the probable extent and growth of the passenger traffic during the current year and the cost and expense incident to the operation of the system, in my opinion justifies the conclusion that the present fare of seven cents should enable the Company to earn this year a balance to surplus approximately equal to the amount of the balance to surplus earned in 1923.

I am not unmindful of the advantages to large portions of the community and indeed to the whole city of an extension of the fare zone and the establishment of school tickets, but notwithstanding the manifest desirability of such changes, I have not been able to reach the conclusion that the base rate of fare should be increased in order to bring about these results. The Commission some years ago adopted the policy of extending the first fare zone to the city boundary when and as the revenues of the Com-

pany permit, and in accordance with this plan these zones have heretofore been extended to the limits of the city on a number of the lines. With a normal increase in riding it should be possible gradually to extend the zones on the remaining lines without placing any additional burden upon the general riding public.

I agree with my colleagues that the property of the Company should be valued for rate making purposes, but feel that pending such a valuation there should be no increase in the present rate of fare.

ORDER NO. 8240.

Before the Public Service Commission of Maryland.

CASE NO. 1682.

In the Matter of the Petition of The United Railways and Electric Company of Baltimore for a Modification of Certain Orders Now in Force Fixing the Rates of Fare to Be Charged by Said Company and For Permission to File, Publish and Put Into Effect a New Schedule of Rates as Set Forth in This Petition.

The petition of The United Railways and Electric Company of Baltimore, filed herein on March 31st, 1924, having duly come on for hearing, and all proceedings in the said matter, including the testimony therein, having been duly read and considered by the Public Service Commission after argument on behalf of the respective parties interested in the said matter; and the Commission having this day filed its opinion in regard to the issues raised by the said petition and the proceedings resulting therefrom, containing its findings of fact in the premises and its conclusions in relation thereto, which said opinion is hereby referred to and made a part hereof.

IT IS THEREFORE, this 26th day of May, in the year Nineteen Hundred and Twenty-four, by the Public Service Commision of Maryland.

ORDERED: (1) That from and after midnight of May 31st, 1924, and until midnight of April 30th, 1925, and for no longer, unless such period be extended for a further period as hereinafter provided, or this Order be earlier modified or abrogated by further order of the Commission, The United Railways and Electric Company of Baltimore shall be permitted to charge and collect for the transportation of perons over its several street railway lines, in Baltimore City and vicinity, a base rate fare of seven and one-half cents when tickets or fare checks

are purchased, or eight cents cash, for the conveyance of each passenger over twelve years of age, and four cents for each child between the ages of four and twelve years, between any of the points designated in the schedule of the said Company filed with the Commission pursuant to the requirements of the Commission's Order No. 7383 entered herein on December 28th, 1922, or between intermediate points, in either direction, on any of such lines, except in so far as the zones on the said lines are hereinafter modified or changed.

(2) That the United Railways and Electric Company of Baltimore shall issue transfers, without charge, between its Curtis Bay line and other lines of the said Company, the purpose of this provision being to abolish the charge of three cents now made for transfers to and from this line under certain conditions.

(3) That The United Railways and Electric Company of Baltimore shall place on sale school tickets which said tickets shall be sold at the rate of five cents per ride and shall be honored for the transportation of children over twelve years of age attending public, parochial and private schools, including high schools, subject to such reasonable restrictions upon the sale and use of the said tickets as the Company shall prescribe, subject to the approval of the Commission.

(4) That changes be and they are hereby made in certain of the existing fare zones of The United Railways and Electric Company of Baltimore as hereinafter set forth, the said changes of zones to be shown in a revised schedule of rates to be filed with the Commission by the said Company as soon as practicable, as follows:

Pimlico-Pikesville-Emory Grove line:

First fare zone extended to City limits, with rearrangement of other zones.

Hamilton-Carney line:

First fare zone extended to City limits.

Back and Middle River line:

First fare zone extended to City limits, and second fare zone extended to Mace Avenue, in Essex.

Riverview-Dundalk line:

First fare zone extended to terminus of the line, at Dundalk Junction.

Sparrow's Point-Bay Shore line:

First fare zone extended to Dundalk Junction, second fare zone extended to Sparrow's Point and third fare zone extended to terminus of the line.

The use of commutation books on the above mentioned lines shall conform to the new zone limits as herein established.

(5) That during the period this Order is in effect The United Railways and Electric Company of Baltimore shall sell on its cars and at its offices and waiting rooms tickets or fare checks which shall be honored for passage on its cars, at the rate of seven and one-half cents each, which said tickets or fare checks shall be sold on the cars in quantiies of two or more, in the option of the company) and should the conductor of a car at any time be unable for any reason to sell a passenger desiring to purchase them at least two tickets or fare checks, then such passenger shall be required to pay but seven cents fare.

(6) That except as hereinbefore changed, the present rates, fares and charges of The United Railways and Electric Company of Baltimore be and they are hereby continued in effect for the period of this Order.

(7) That the proceeding heretofore instituted by the Commission, known as Case No. 533, in the matter of the valuation of the properties and the investigation of the capitalization and of the affairs of The United Railways and Electric Company of Baltimore, be prosecuted to a conclusion.

(8) That the United Railways and Electric Company of Baltimore shall establish or cause to be established by agencies acceptable to this Commission bus service between the northern and southern sections of the city east of Patterson Park, the date at which said service shall

begin and the terms and conditions under which it shall be furnished to be subject to the approval of the Commission.

(9) That this Order shall be effective from and after midnight of May 31st, 1924, and until midnight of April 30th, 1925, and for no longer, unless such period be extended for a further period, or this Order be earlier modified or abrogated by further order of the Commission, provided that if there shall be pending before the Commission on April 30th, 1925, the valuation proceedings mentioned in the preceding paragraph of this Order, or any other proceedings concerning the rates of fare of The United Railways and Electric Company of Baltimore, this Order and the rates of fare herein provided shall continue in full force and effect until the determination by the Commission of the said pending proceedings.

(10) That The United Railways and Electric Company of Baltimore shall furnish to this Commission accurate and complete statements under oath, and in convenient form, setting forth the number of revenue and transfer passengers carried, and the number of car-miles operated, the cash receipts from operation and other sources, and the operating and other expenditures of the Company, all set forth in the manner prescribed by the rules of this Commission for accounting by street railway companies, so soon as may be reasonably practicable and convenient after the end of each calendar month during the period this Order remains effective, and in no event later than the last day of the next succeeding calendar month, covering the operations of the Company during the next preceding month.

(11) That the right of The United Railways and Electric Company of Baltimore to charge and collect the fares in this order prescribed shall be held subject at all times during the period covered by such order, or any extension thereof which may hereafter be granted as aforesaid, to the right and power of this Commission to reopen this case in the light of the facts disclosed by the monthly reports aforesaid, or of other facts otherwise coming to the attention of this Commission, and modify the rates of

fare by this order authorized to be charged and collected by the Company.

And It Is FURTHER ORDERED: That a copy of this order be forthwith served upon the proper officers of The United Railways and Electric Company of Baltimore, and that said Company, within ten days from the date of the service of such copy, advise this Commission in writing whether or not it will accept and abide by the same.

EZRA B. WHITMAN,

HAROLD E. WEST,

Commissioners.

(F)

CASE NO. 533, OPINION FILED MARCH 9, 1926, AND ORDER NO. 10072.

OPINION

Before the Public Service Commission of Maryland.

Case No. 533.

In the Matter of the Valuation of the Properties and the Investigation of the Capitalization and Affairs of the United Railways and Electric Company of Baltimore, on the Motion of the Commission, under Authority Conferred by Section 30 of the Public Service Commission Law.

Appearances:

Clarence W. Miles, People's Counsel.

E. J. D. Cross, for Mayor and City Council of Baltimore.

Linwood L. Clark, for People's Corporation.

Edwin G. Baetjer, Joseph C. France and William H. Maltbie, for The United Railways and Electric Company of Baltimore.

By the Commission. Filed March 9th, 1926.

This proceeding was instituted by Order No. 1024 of the Commission entered on December 30th, 1912, by which order the Commission directed its Chief Engineer to report as to the cost of making a valuation of the property of The United Railways and Electric Company of Baltimore, hereinafter referred to as the "Railways Company," and as to the time necessary for such valuation.

Reports were filed from time to time by the then Chief Engineer, the late Charles E. Phelps, Jr., and by the then Assistant General Counsel, the late Osborne I. Yellott, and various orders were entered by the Commission requiring the furnishing of certain information by the Railways Company.

Much of the engineering work incident to the valuation was completed, but due to other more immediate and pressing problems before the Commission, the case was not pressed to a conclusion before the World War started. The economic upheaval which came with and continued after the World War taxed the staff and resources of the Commission to the fullest extent, with the result that the present case was permitted to lie dormant.

In the meantime, the base rate of fare of the Railways Company had been increased to meet the higher costs of operation from five cents to six cents on October 1st, 1918, to six and one-half cents on October 1st, 1919, to seven cents on January 1st, 1920, and finally to seven and one-half cents on June 1st, 1924. In addition to the higher costs of operation which went to absorb the increased revenues resulting from the successively increased rates of fare, the Commission from time to time extended the fare zones on the suburban lines of the Railways Company until finally, by its Order No. 8240 entered in Case No. 1682 on May 26th, 1924, it extended the city fare to the city limits as established by the Annexation of 1918 on all lines where it had not theretofore been extended to the city line and made other zone extensions on the county lines, and also provided for the sale of school tickets at the rate of fare of five cents per trip. All these changes reduced materially the revenue which the Railways Company otherwise would have obtained from the higher rate of fare.

In its Order No. 8240 the Commission ordered that:

> "The proceeding heretofore instituted by the Commission known as Case No. 533, in the matter of the valuation of the properties and the investigation of the capitalization and of the affairs of The United Railways and Electric Company of Baltimore be prosecuted to a conclusion."

The said Order further provided:

> "That this Order shall be effective from and after midnight of May 31st, 1924, and until midnight of April 30th, 1925, and for no longer, unless such period be extended for a further period, or this Order be earlier modified or abrogated by further order of the Commission, provided that if there shall be pending before the Commission on April 30th, 1925, the valuation proceeding mentioned in the preceding paragraph of this Order, or any other proceeding concerning the rates of fare of The United Railways and Electric Company of Baltimore, this Order and the rates of fare herein provided shall continue in full force and effect until the determination by the Commission of the said pending proceedings."

Following the entry of Order No. 8240 the Commission undertook the work of making a valuation of the property of the Railways Company, but other matters intervened to delay the work of the engineering and accounting departments of the Commission preliminary to the actual starting of the hearings, with the result that hearings did not start until May 4th, 1925. The hearings consumed in all thirty-one days, in addition to which three days were devoted to oral argument of counsel.

The Commission's engineering staff, under the direction of its chief engineer, H. Carl Wolf, with the assistance of its valuation engineer, W. F. Strouse, was augmented by a small group of temporarily employed engineers and proceeded with the making of an estimate of the cost of reproduction and with a determination of the historical cost of the railway company's property. In coliaboration with the company's engineers, a complete inventory of the property owned and operated by the company as of January 1, 1924, was prepared and carefully checked. Independent cost estimates were undertaken by the Commisson's staff.

People's Counsel Clarence W. Miles assumed office on January 1st, 1925, and immediately began preparation of the people's side of the case. At his request the Com-

mission retained Robert M. Feustel, a consulting engneer of Fort Wayne, Indiana, who has appeared before this Commission in other cases, to assist him. The entire engineering and accounting staff of the Commssion was placed at the disposal of Mr. Miles and co-operated to the fullest extent with Mr. Feustel and his assistant, Walter L. Black.

People's Counsel elected to check cost estimates prepared by the company rather than to prepare independent estimates. He accepted a large part of the physical costs claimed by the company and presented testimony in defense of eliminations made by him from others and of separate computations for a number of items independently computed, particularly overheads. There were therefore presented in evidence the company's estimate and that prepared by Mr. Feustel and Mr. Black, with the assistance of the Commission's staff. An independent appraisal of cost to reproduce new was prepared under Mr. Wolf's direction, but was not placed in evidence.

The Commission, after a careful analysis and full consideration of all the testimony submitted in the case, after a thorough study of the briefs of counsel, and after giving due weight to the various elements which must be considered in determining the fair value of a property such as that of the United Railways and Electric Company as laid down by the United States Supreme Court in the case of Smyth versus Ames, finds the fair value of the property of the Railways Company as of January 1, 1924, to be $77,000,000.

We find the physical property, overheads, working capital and going value, to have a value of $70,000,000, and easements $7,000,000, making the total of $77,000,000.

This is to be compared with the claim of $106,641,360 made by the Company, which includes easements, and $60,577,150 conceded by the People's Counsel, which does not include any allowance for easements.

In arriving at the foregoing figures the Commission has considered the cost to reproduce the property new, the amount of depreciation existing in the property, or

its per cent condition as of January 1, 1924, original cost so far as that could be determined, and the par and market value of securities outstandng against the property as it believes it is required, under the law, to do.

Nevertheless, in arriving at its finding of fair value it has been compelled to depend mainly upon the figures having to do with cost of reproduction.

The Commission took up, item by item, the valuation of the various component parts of the physical property of the Railways Company and carefully studied each item in the light of the evidence submitted in the testimony and the summarized values as given in the briefs of counsel; and also made a careful study with the members of the engineering force of the Commission of the relative merits of the testimony for each item of value, and after such a study arrived at what the Commission considered to be the fair value of each item entering into the physical property, overheads and intangibles.

In the consideration of the value placed upon each item there were differences of opinion among the members of the Commission regarding some of the items, but we have been able to reconcile these differences and agree upon what all the members of the Commission could consider a fair value for each item in question. This agreement among the members of the Commisson covered every item of the physical property, overheads and intangibles with the single exception of easements, Commissioner Harper disagreeing on this item. The other members of the Commission felt that in view of the ruling of Senator William Cabell Bruce, then General Counsel of the Commission, in the Consolidated Gas case of 1913, and the action of the Commission at that time in allowing a value for easements, substantially bound this Commission to an allowance of easements in the present case. However, as 13 years had passed since that opinion was rendered and that action taken by the Commission and as there have been a number of Supreme Court decisions in which the question was involved, it was thought wise to ask the Attorney General who is now the legal adviser of the Commission, for his opinion as to whether a value for easements should be allowed.

Under date of February 11, he advised the Commission that under the Maryland law he did not see how the Commission could avoid including the value of the easements, and the majority of the Commission accepted his view of the situation, as it was prepared to accept it had he ruled otherwise.

Both the People's Counsel and the counsel for the Railways Company, in preparing their valuation figures, followed the account numbers of the Uniform System of Accounts of the Public Service Commission, and placed their value on the items as described under the different account numbers. In the following paragraphs are given the estimates of the cost of reproduction of these items as determined by the People's Counsel and the Railways Company and the Commission's finding for each item.

502—RIGHT OF WAY

People's Counsel's appraisal.....$167,576
Railways' appraisal.....$745,719

The People's Counsel arrived at his figure by appraising the rights of way on the basis of the acreage value of adjoining property. The Railways Company arrived at its value by considering the value of adjoining property. If this was subdivided into lots this value was based upon the square foot value of lots of 150 foot in depth. Where the property was not subdivided, acreage figures as a basis of valuation were taken. After reaching this value the Railway then multiplied the figures thus reached by three, claiming that the cost of procuring a narrow strip in front of the property would be three times as great as the contiguous property itself. The People's Counsel's figure not only included the rights of way in the County, but also the rights of way privately owned in the new Annex, which latter properties are included in the company's claim for easements. After giving careful consideration to all the evidence presented in connection with this item, the Commission agreed upon the value of the property as determined by the Railways, but without the multiplier as the fair value of the rights of way. The Commission does not believe that the rights of way are three times as valuable as

the adjoining property. It recognizes that the company would probably be held up in some cases in trying to secure these rights of way, but it also recognizes the fact that many property owners would donate the rights of way for the advantage of securing a car line in front of their property. The fair value of the right of way outside the city limits are therefore determined by the Commission to be $248,573

503—OTHER LAND USED IN ELECTRIC RAILWAY OPERATIONS

People's Counsel's appraisal..$1,336,380
Railways' appraisal $1,850,662

After consideration of the testimony as to the value of the various parcels of land entering into this item, the Commission arrived at an appraisal, of all the parcels at a figure of $1,748,417

504—GRADING

People's Counsel's appraisal..$1,836,582
Railway's appraisal $2,239,931

The People's Counsel in arriving at his appraisal of this item made no allowance for contractor's profits or overheads. The Commission believes that this part of the work would be done by a contractor, the testimony being to the effect that practically all such work for the company has been done by a contractor over a long period of years. The Commission, however, believes that in some instances the percentage of profit allowed by the company has been too high, and has arrived at a reproduction figure of the grading of..... $2,210,453

505—BALLAST

People's Counsel's appraisal..$1,752,803
Railways appraisal $2,093,940

In this item the People's Counsel again deducted all of the contractor's profits and overheads. The Commission has allowed field overheads, including the cost of superintendence and other expenses, but no contractor's profit, and arrived at a cost of reproduction for this item of $1,967,588

506—TIES

People's Counsel's appraisal..$1,292,828
Railways' appraisal $1,537,461

In arriving at the reproduction cost of this item, the Commission gave practically the same considerations as were described for the item 505, and arrived at a reproduction cost of $1,435,507

507—RAILS, RAIL FASTENINGS AND JOINTS

People's Counsel's appraisal..$3,422,424
Railways' appraisal $4,050,495

The Commission by the same reasoning as was applied to item 505 arrived at a reproduction cost of this item of $3,849,014

508—SPECIAL WORK

People's Counsel's appraisal..$2,514,331
Railway's appraisal $2,993,016

The Commission by the same reasoning as was applied to item 505 arrived at a reproduction cost of this item of $2,814,396

510—TRACK AND ROADWAY LABOR

People's Counsel's appraisal..$3,663,490
Railways' appraisal $4,825,215

The People's Counsel's claim was based largely on Philadelphia costs as testified to by Messrs. Feustel and Black. These figures have no allowance for general contractor's profit or engineering. In arriving at its figure the Commission considered the weight of testimony on this item and allowed for a general contractor, but reduced the contractor's profit, and finally determined upon the reproduction cost for this item of.....$4,583,955

511—PAVING

People's Counsel's appraisal..$2,765,465
Railways' appraisal $3,297,811

The same reasoning was applied to this item as to the 510, and the Commission arrived at a reproduction cost of $3,165,038

512—ROADWAY MACHINERY AND TOOLS

People's Counsel's appraisal....$119,842
Railways' appraisal $119,842

There being agreement on this figure, the Commission accepted the figure of $119,842

515—BRIDGES, TRESTLES AND CULVERTS

People's Counsel's appraisal...$1,307,327
Railways' appraisal $1,281,419

While the People's Counsel's figure is higher than the company's claim, there is an item which we have included in item 511 for paving and, after making this deduction, the company and the People's Counsel are in substantial agreement, so the Commission accepts the figure of $1,281,419

516—CROSSINGS, FENCES AND SIGNS

People's Counsel's appraisal.....$88,983
Railways' appraisal $97,904

The Commission to agree with the appraisal of the People's Counsel as to reproduction cost of this item of $88,983

517—SIGNALS AND INTERLOCKING APPARATUS

People's Counsel's appraisal.....$137,579
Railways' appraisal $153,583

The Commission felt that the People's Counsel's claim should be increased by certain field charges. Therefore, the reproduction cost arrived at by the Commission is $145,897

518—TELEPHONE AND TELEGRAPH LINES

People's Counsel's appraisal.....$289
Railways' appraisal $305

By adding certain field expenses the Commission arrived at the same figure as the company.....$305

519—POLES AND FIXTURES

People's Counsel's appraisal...$1,138,441
Railways' appraisal $1,338,820

After carefully considering the testimony in regard to this item, the Commission believes that this work would be done by the company's own force, and further believes that the People's Counsel's figure should be increased to take care of the company's field costs. The Commission's reproduction cost of this item is $1,195,363

520—UNDERGROUND CONDUITS

People's Counsel's appraisal.... $189,464
Railways' appraisal $219,723

The Commission believes that this work would be done by a contractor and that the reproduction costs would be that given by the company..... $219,723

521—DISTRIBUTION SYSTEM

People's Counsel's appraisal.. $3,256,822
Railways' appraisal $3,852,902

The same reasoning was applied to this item as to item 519, and the Commission arrived at a reproduction cost of $3,549,645

523—SHOPS AND CARHOUSES

People's Counsel's appraisal.. $4,207,565
Railways' appraisal $4,441,435

After a consideration of all the testimony in regard to this item, the Commission agreed upon the figure for its reproduction cost of $4,350,000

524—STATIONS, MISCELLANEOUS BUILDINGS AND STRUCTURES

People's Counsel's appraisal.... $318,324
Railways' appraisal $340,799

After consideration of all the testimony in regard to this item, the Commission agreed upon the figure for its reproduction cost of $335,598

526—PARK AND RESORT PROPERTY

People's Counsel's appraisal.. $489,272
Railway's appraisal..... $608,574

After consideration of all the testimony in regard to this item, the Commission agreed upon the figure for its reproduction cost of.....$510,877

529—OTHER EXPENDITURES—WAY AND STRUCTURES

People's Counsel appraisal.....$45,676
Railways' appraisal $45,676

The Commission accepts the reproduction cost of.$45,676

530—PASSENGER AND COMBINATION CARS

People's Counsel appraisal..$10,527,765
Railways' appraisal $12,009,033

The People's Counsel arrived at his cost of reproduction by applying to the original cost of each of the 1,367 used and useful cars a multiplying factor based on the trend of costs given to the trade by the J. G. Brill Company for the period from 1914 to 1924, and on information secured by Mr. Feustel from the Brill Company on the trend of prices to that date to the trended cost so secured he added 1 per cent for omissions and contingencies. Neither the People's Counsel nor the company's estimates include any allowance for several hundred cars of antiquated design still retained by the company, but not used and having no prospect of being used. The company did include the cost of $110 open car bodies which at the date of valuation were being rebuilt into permanently coupled units. The cost trend referred to did not include shop overhead costs of the cars. The company's estimate was based upon the figures furnished by the J. G. Brill Company as to the reproduction cost of these cars, including shop overheads and 15 per cent profit. After careful consideration of all the testimony in regard to the value of the used and useful cars, and excluding several hundred obsolete cars, the Commission accepted the cost figures presented by the Brill Company with the exception that it made a reduction of the profits from 15 to 10 per cent, which brought its reproduction cost to the figure of $11,486,901

531—FREIGHT, EXPRESS AND MAIL CARS

People's Counsel's appraisal...$39,322
Railways' appraisal $52,094

The same reasoning was applied to these cars as to those in the preceding item, and the Commission arrived at the reproduction cost of.....$49,829

532—SERVICE EQUIPMENT

People's Counsel's appraisal..$477,729
Railways' appraisal.....$454,148

The company's claim omitted an item of $55,236, included in its testimony, and after adding this to its claim the Commission arrived at its reproduction in the same way as in the two preceding items. This reproduction cost agreed upon by the Commission is.....$487,237

533—ELECTRIC EQUIPMENT OF CARS

People's Counsel's appraisal.$5,747,935
Railways' appraisal.....$6,087,930

The People's Counsel's figure was again based on trended prices, and after considering the definite figures furnished by the manufacturers of this equipment, the Commission accepted the reproduction cost of.....$6,087,930

536—SHOP EQUIPMENT

People's Counsel's appraisal...$350,595
Railways' appraisal.....$350,595

The Commission accepted this agreed upon figure of $350,595

537—FURNITURE

People's Counsel's appraisal..$270,720
Railways' appraisal.....$270,720

The Commission accepted this agreed upon figure of $270,720

538—MISCELLANEOUS EQUIPMENT

People's Counsel's appraisal..$153,012
Railways' appraisal.....$153,012

The Commission accepted this agreed upon figure of $153,012

539—POWER PLANT BUILDINGS

People's Counsel's appraisal...$43,325
Railways' appraisal $46,095

After a consideration of all the evidence, the Commission arrived at a reproduction cost of this item of....$45,500

540—SUBSTATION BUILDINGS

People's Counsel's appraisal..$448,061
Railways' appraisal.....$478,810

After a careful consideration of all the testimony regarding this item, the Commission arrived at a reproduction cost of $473,822

542—POWER PLANT EQUIPMENT

People's Counsel's appraisal..$169,972
Railways' appraisal.....$169,972

The Commission accepted this agreed upon figure of $169,972

543—SUBSTATION EQUIPMENT

People's Counsel's appraisal.$1,837,859
Railways' appraisal.....$1,837,859

The Commission accepted this agreed upon figure of $1,837,859

544—TRANSMISSION SYSTEM

People's Counsel's appraisal...$642,083
Railways' appraisal.....$759,898

After adding certain field costs to the People's Counsel's figures, the Commission agreed upon the reproduction cost for this item of.....$718,046

501—ENGINEERING AND SUPERINTENDENCE

People's Counsel's appraisal.$3,299,975
Railways' estimate.....$2,940,229

The People's Counsel's estimate for engineering and superintendence is arrived at by taking 6½ per cent of accounts 502 to 544, inclusive. This figure included certain field overheads as well as engineering.

The Company's figure is based on 5 per cent of its appraisal of the property in accounts 502 to 544, inclusive, which appraisal included contractor's profit and overheads.

The Commission's figure is based on 5 per cent of the same accounts. Its allowance for field and contractor's profits where applicable, overheads and superintendence, was included in the various accounts.

In a number of items previously listed the People's Counsel's figures did not include field overheads, and for this reason his percentage on engineering was increased to 6½ per cent. In the Commission's figures there were included in these several items the field costs, so the Commission's figures on the items in question were higher than the People's Counsel's for this reason. The Commission has agreed upon 5 per cent of items 502 to 544, inclusive, and arrives at a figure of.....$2,799,884

546—LAW EXPENDITURES

People's Counsel's estimate...$253,799

The company did not make any separate claim for legal expenses, but made a claim for administrative and legal expenses combined, amounting to $1,176,092, which is practically 2 per cent of items covering the total of physical property.

The Commission has made an allowance for legal expenses amounting to 1 per cent of the items of the physical property, or.....$559,977

549—TAXES

People's Counsel's estimate...$462,229
Railways' estimate.....$462,229

This is the actual amount of property taxes paid by the company in 1924. The Commission accepts this agreed upon estimate of.....$462,229

550—MISCELLANEOUS

Under this item, the company included Insurance, Organization Prior to Construction and Legal and Administrative Expenses.

People's Counsel included Organization Prior to Construction and Administration During Construction, but made no allowance for Insurance.

If it is considered that of the 2 per cent claimed by

the company for Legal and Administrative Expenses, one-half of one per cent is for Legal Expenditures, the other 1½ per cent would be for Administrative During Construction.

In the People's Counsel's estimate, there was included under Miscellaneous an item of 5 per cent, and for purposes of comparison we have divided this so that 2 per cent is for Organization Prior to Construction and 3 per cent for Administration During Construction.

The following are the elements of the various items:
Organization Prior to Construction

People's Counsel's estimate.$1,015,697
Railways' estimate.....$1,764,138

The company's figure is 3 per cent of the total physical property, while the People's Counsel's figure is 2 per cent of the total physical property.
Administration During Construction

People's Counsel estimated $1,523,643, the company estimated $882,069. The People's Counsel's estimate is based on 3 per cent of the total value of the physical property, while the company's claim is for 1½ per cent of the total value of the physical property. This difference is brought about by the fact that the company, in claiming a general contractor would be employed, figures that the cost of Administration During Construction would be less, with a general contractor, than if one was not employed.
Insurance

The company estimated $62,694. This is the actual insurance paid by the company during the year 1923.

People's Counsel made no allowance for Insurance, as he claimed that all necessary allowances were made in the base cost.

The total claims for both the company and the People's Counsel for this Miscellaneous item are as follows:

People's Counsel's estimate.$2,539,240
Railways' estimate.....$2,708,901

The Commission has included all the above items and in

addition, as provided for in the classification of accounts, has included such expenses and cost of financing as would be incurred by the company as explained below in the discussion of Costs of Financing, no separate allowance has been made elsewhere for this item. The Commission arrived at a figure for this Miscellaneous account of $3,589,186

547—INTEREST DURING CONSTRUCTION

People's Counsel's estimate..$4,587,296
Railways' estimate.....$7,393,097

The People's Counsel's estimate is based on 8 per cent of the cost of accounts 501 to 546, inclusive, and 549 and 550, this being a compromise figure testified to by the witness Feustel, with no definite reference to the length of the construction period assumed.

The company's claim is based on 11 per cent of the cost of accounts 501 to 546, inclusive, and accounts 549 and 550. The company assumed a four-year construction period and that all the money would be borrowed in advance at 7 per cent, that 3 per cent interest would be allowed on bank balances and that the property would begin to earn at the end of two years, thus giving one-half (of 28 per cent less 6 per cent), which equals 11 per cent.

After consideration of the testimony, the Commission adopted a percentage of 8, which, applied to accounts 501 to 546 inclusive, and accounts 549 and 550, gives an allowance for this item of.....$5,072,717

WORKING CAPITAL

People's Counsel claimed $1,400,000 and the company claimed $2,000,000. Both included approximately $1,000,000 as the cost of necessary materials and supplies on hand. People's Counsel based his claim on the excess of liquid assets over liquid liabilities, and allowed approximately $400,000 for cash working capital, while the company maintained that at least $1,000,000 was necessary to provide for bills falling due and to maintain proper bank balances.

The Commission allowed the agreed estimate for materials and supplies of $1,000,000 and in addition it allowed

approximately two weeks' operating expenses, amounting to $500,000, giving a total allowance for Working Capital of $1,500,000

COST OF FINANCING

People's Counsel estimated $3,166,425 for this item, being 5 per cent of the estimated cost of reproduction of the property in accounts 501 to 550, inclusive, plus Working Capital.

The company claimed $4,476,184, being 6 per cent of the same items included by People's Counsel.

The amount to be allowed for the Cost of Financing in valuation proceedings is one of the unsettled elements in such proceedings. In a number of cases, amounts similar to those estimated by the company and People's Counsel have been allowed. This amount is supposed to cover the cost to the company of selling its securities and includes what is commonly called the "bankers' spread" or the difference between the amount of money received by the company and the price at which the securities are sold to the public. In some cases it has not only been made to cover the difference in cost as described above, but the difference between the amount received by the company and the par value of the securities. On the other hand, it is claimed in some cases that the only cost of financing which should be included is the actual cost incurred by the company itself and not by the bankers in floating the securities. It was agreed to put in account 550, Miscellaneous, an increased amount to cover the cost of financing and this explains why the amount allowed under account 550 is greater than that estimated by either the company or the People's Counsel. The Commission therefore makes no specific allowance for cost of financing.

DEPRECIATION

After arriving at its figures for the reproduction cost new of the property, the Commission took up the question of depreciation, and present per cent condition of the property; handling this, item by item, as it handled the items of the reproduction cost. The figures reached by the Commission for the per cent condition of the property are shown in the table which is embodied in this

opinion. It is not necessary to take up each item in detail and give the reasons for the conclusions reached. All that is necessary is to say that the Commission weighed very carefully all the elements which affect the various features of the property. The per cent condition of the completed property, as claimed by the Railways, was 91.7 per cent. The condition claimed by the People's Counsel was 81.3 per cent. The condition found by the Commission is 88 per cent. These are all based on the total cost of reproduction new, including Working Capital.

There are many theories as to how depreciation should be figured on any property. The extreme advocates on one side claim that as long as the property is kept in 100 per cent operating condition there should be no depreciation charged against the property, and that worn out and obsolete property should be paid for out of current maintenence. This theory makes no provision for any large retirements and if any large amount of property is taken out of use, due to obsolence or other causes, there is no fund provided for taking care of such a retirement. The advocates of this method, however, maintain that a suspense account, for such large retirements, should be taken care of over a period of years in the future, rather than accumulating a fund which can be spent at the time the retirement takes place.

On the other hand, the opposite extreme is the theory that every item going into a property should be given a definite life and that each year there should be credited to a depreciation reserve an amount proportional to the length of life of the property involved. This latter theory leads to a number of absurdities in that the life, for instance, of buildings varies so markedly that at the end of the assumed life of a particular building it may still be in existence and performing its functions just as well as it did when it was new.

Between these two theories there is what is called the "Observed Depreciation," which is the placing of a per cent condition on property as a result of an observation and inspection of all its definite parts. The difficulty with such a method is that it does not take into account retirements for obsolence. Many elements of a Street Railway may be practically in 100 per cent operating condi-

tion one year and be retired the next because of obsolence, as for instance the abandonment of the cable system while in perfect operating condition for the cheaper and more economically operated trolley system, which we have today.

GOING VALUE

People's Counsel's estimate. $6,506,881
Railways' estimate.....$16,000,000

The People's Counsel based his estimate upon the testimony of Mr. Feustel, who frankly stated that Going Value was something that was almost impossible to figure, and in his opinion, in the case of the United Railways, it was 10 per cent of the reproduction of the physical property, plus overheads.

The company, in an elaborate statement, attempted to analyze the different elements which enter into Going Value and to place a money value on these various elements. Among these elements were: trained personnel, accumulated records, operating income, realignment, supercession of property and development of traffic, particularly in the suburban territories.

The Commission concedes that substantially all of these are elements of Going Value, but when one endeavors to come to place a definite money value on each he is lead into realms of fancy from which it is difficult to get back to the substantial facts of the situation. Many regulatory bodies have adopted as a proper allowance for going value a percentage of the value of the property. This being a matter for the judgment of the Commission, it does not undertake to put a value on the various elements mentioned by counsel for the company, but adopts the figure of 12½ per cent of the physical property and overheads, but not including working capital, as fairly representing the Going Value of the Railways Company.

This going value varies with every company that comes before the Commission, according to the peculiar facts in connection with the development of that company's business. In the case of the United Railways and Electric Company, it is well known that the company itself, in going into undeveloped sections in the past has

done so at a loss until the territory has developed. The territory served would not have developed if the railway had not first been built. In the evolution of modern transportation there have also been tremendous costs incurred by the companies in abandoning obsolete property because of newer developments. The costs that were incurred could not be called imprudent because at the time they were incurred they were for the best and most up-to-date methods known to urban transportation experts.

The 12½ per cent which the Commission allow amounts to $8,560,210.

The Supreme Court has said that "in order to ascertain the value it is necessary to consider the original cost of construction and the amount expended in permanent improvements, the amount and market value of bonds and stock, the present as compared with the original cost of construction and the probable earning capacity of the property under particular rates prescribed by the statute. * * * We do not say that there may not be other matters to be regarded in estimating the value of the property." (Smyth versus Ames, Supra.)

VALUE OF SECURITIES

On January 1st, 1924, the par value of the outstanding securities of the United Railways and Electric Company was as follows:

Stock	$20,461,200
Bonds—	
Income	$14,000,000
Mortgage	51,366,000
Total of Bonds	$65,366,000
Total par value of all securities	$85,827,200

At the same time the market value of these securities, as indicated by stock market quotations was as follows:

Stock	$6,956,808
Bonds—	
Income	$7,210,000
Mortgage	42,463,010
Market value of bonds.....	$49,673,010
Total market value of securities.....	$56,629,818

ORIGINAL COST

The company claimed that the original cost of the property at the time of the consolidation in 1899 was at least $42,621,455. The cost of the net additions since that time have been $25,537,453. The company, therefore, claimed as of January 1st, 1924, that the original cost of the property was at least $68,158,908. People's Counsel claimed that the original cost at the time of the consolidation was $32,000,000, and, adding the $25,000,000 in additions, that the original cost of the property as of January 1st, 1924, was.....$57,000,000

It is impossible for the Commission to ascertain what is usually known as the original cost of the property. Such records as to the original cost as the company had were destroyed in the fire of 1904 and the company has in its possession only the record of what was paid for the property. The figure above given by the company does not represent either the par or the market value of the securities issued by the company at that time, as the par value of the securities was $60,366,000, with a market value of.....$52,844,713

The company claimed as original investment not the market value of the securities issued to the syndicate, which effected and financed the consolidation, but the cash price paid by the syndicate for the stocks of the Baltimore City Passenger and the Baltimore Consolidated Railways, plus the par value of the underlying

bonds, and has considered the market value of the new securities issued only in the case of the relatively small amount of the United Railways common stock issued in exchange for the common stock of the Baltimore and Northern Railway. It has made no claim for the common stock issued as a part of promoter's fee in exchange for which the controlling interest of the Baltimore, Middle River and the Sparrow's Point Railway was transferred to the new company. In other words, the Railways Company has taken as the cost of the property to the syndicate and as the original investment in the property, $44,076,000, or over $8,000,000 less than the par value of the securities, and from this figure it has deducted the investment securities transferred by the underlying companies to the new company to the sum of $1,454,545.50, leaving a net original cost claimed by the company of $42,621,454.50 at the time of the consolidation in 1899.

The $25,537,453 represents the net additions to the property since the consolidation in 1899.

The People's Counsel arrived at his original cost of $32,000,000 by using the actual stock exchange quotations on the stock of the constituent companies, plus their estimated indebtedness, which gave a value of the property of $32,866,000, one year prior to the announcement of the plans for consolidation. He also produced an exhibit tending to show that the actual value of the physical property as of April 1st, 1899, was $32,127,460, which included superseded property estimated at $4,235,871 for the horse car period, and $4,168,536 for the cable car period, or a total for these two items of approximately $8,400,000, which, if deducted from the $32,000,000 above mentioned would leave less than $24,000,000 actual property upon the books of the company at the date of the consolidation.

ORIGINAL COST EXPRESSED IN THE VALUE OF THE DOLLARS OF TODAY

In the telephone case decided about a year ago, the Federal Court in arriving at the value of the property of The Chesapeake and Potomac Telephone Company of Baltimore City, applied to the original cost an index figure of 1.54, which was the general index figure showing the

purchasing power of the dollar of today as compared with the purchasing power of the dollar of 1914. In other words, it took a dollar and fifty-four cents to purchase in 1925 what one dollar purchased in 1914. Applying this same method to the various original costs given in the preceding paragraph we obtain the following figures:

People's Counsel's Original Cost,

1899	$32,000,000
Index Figure Applied by Federal Court	1.54
Present Value of 1899 Property	$49,280,000
Additions to 1914 (Approx.)	$17,500,000
Index Figure Applied by Federal Court	1.54
Present Value of Additions from 1899 to 1914	$26,950,000
Additions 1914 to 1923 (Approx.)	7,500,000
Total Present Value of Property as of Jan. 1, 1924	$83,730,000

Company's Original Cost, 1899	$42,621,454
Index Figure Applied by Federal Court	1.54
Present Value of 1899 Property	$65,637,000
Additions to 1914 (Approx.)	$17,500,000
Court's Index Figure	1.54
Present Value of Additions 1899 to 1914 (Approx.)	$26,950,000
Additions 1914 to 1923	7,500,000
Total Present Value of Property as of Jan. 1, 1924	$100,087,000

The People's Counsel claimed that the actual value of property as of 1899 should be reduced by $8,000,000 because of superseded horse car and cable property, leaving $24,000,000 as the actual value of the physical property in 1899. Applying the index figure of 1.54 to these figures, we get the following:

People's Counsel's Value of Actual Property	$24,000,000	
Federal Court Index Figure	1.54	
Present Value of 1899 Property		$36,960,000
Additions to 1914 (Approx.)	$17,500,000	
Federal Court Index Figure	1.54	
Present Value of Additions 1899 to 1914		$26,950,000
Additions 1914 to 1923 (Approx.)		7,500,000
Total Present Value of Property as of Jan. 1, 1924		$71,410,000

Making the same deduction for superseded property from the original cost claimed by the company, the following figures are obtained:

Company's Claim less Superseded Property	$34,000,000	
Court Index Figure	1.54	
Present Value of 1899 Property		$52,360,000
Additions 1899 to 1914 (Approx.)	$17,500,000	
Court Index Figure	1.54	
Present Value of Additions 1899 to 1914		$26,950,000
Additions 1914 to 1923 (Approx.)		7,500,000
		$86,810,000

The figures above given might be modified to some extent by applying the index from 1899 to 1914 and by taking account of certain unused property that is not

taken care of in the above figures, but these changes would tend to offset each other. The figures arrived at are merely computed as a guide in reaching the fair value of the property and are, approximately, what would be obtained in applying the Federal Court's method in arriving at the value of the property as of today.

SUMMARY

Summarizing the various elements entering into the determination of the fair value of the property, we have the following:

Cost to Reproduce New, Undepreciated	
Company (including easements)	$113,264,205
Company (excluding easements)	95,079,251
People's Counsel (excluding easements)	72,975,688
Commission's finding (excluding easements)	78,541,895
Cost to Reproduce New, Less Depreciation	
Company (including easements)	106,641,360
Company (excluding easements)	88,456,406
People's Counsel (excluding easements)	60,488,392
Commission's finding (excluding easements)	70,100,645
Securities	
Par Value	85,827,200
Market Value	56,629,818
Original Cost	
Company	68,158,908
People's Counsel	57,000,000
Original Cost in Present Day Dollars	
Company	100,087,000
Company (less superseded property)	86,810,000
People's Counsel	83,730,000
People's Counsel (less superseded property)	71,410,000

We therefore find the fair value of the property of The United Railways and Electric Company of Baltimore, without easements, to be $70,000,000

EASEMENTS

Long and serious study has been given to the problem of easements, and as heretofore stated it was the one issue on which the Commission could not agree. The question as to whether a value should or should not be allowed for easements was raised by People's Counsel as a purely legal issue, he holding that no value for them should be allowed, notwithstanding the Maryland Court of Appeals had held them to constitute an interest in real estate, and taxable as real estate.

Senator William Cabell Bruce, then General Counsel to the Commission, on January 4, 1913, in the Consolidated Gas and Electric Company's valuation case, ruled that a value for easements must be allowed and the Commission in that case allowed the Gas Company a value of $5,000,000 for its easements, this being the amount on which they were taxed. However, as thirteen years had passed since the opinion referred to had been given, and the allowance made, and as numerous Federal Court decisions on the general subject of franchises had been given, the majority of the present Commission felt it to be its duty to refer the question again to its legal adviser, who is now the Attorney General of the State. In his opinion, given under date of February 11, 1926, he states that he has carefully examined the authorities bearing upon the question, that it is settled law in this State that the easements owned by the United Railways Company are property, and are subject to taxation under the tax laws of the state; and

> "I am unable to see how the Commission can avoid including the value of the easements owned by the United Railways and Electric Company in the streets of this city in determining the value of its property for rate making purposes."

Therefore, acting upon this opinion an allowance is made for easements.

For this element of the company's property it claimed a value of $18,184,954, made up as follows:

Easements in Baltimore City	$17,816,292
Easements in the Counties	85,204
Turnpike rights of way in Counties	283,458
Total	$18,184,954

COMPANY'S BASIS FOR ARRIVING AT EASEMENT VALUES

For its easements in the new annex the company bases its value on their valuation for taxation purposes. On such mileage in this territory, not subject to the 9 per cent park tax, these easements are taxed on a valuation of $12,500 per single track mile, or a total value for the easements in the new annex of.....$1,131,512

For easements in the old annex it also accepts the value fixed by the public authorities for taxation purposes of $17,692 per single track mile, or a total of.....$1,140,143

In arriving at what it claims to be the value of its easements in the old city, the company suggested three methods. The first of these was to determine the relative value of an annex easement, as compared with the value of abutting land and apply the same ratio to the old city easements. By this method it reached a value of easements in the old city and old annex of.....$15,887,243

The second method was to give the old city easements a value per mile which bears the same ratio to the value per mile of the old annex easements as the density of population in the old city bears to the density of population in the old annex. This method gave a value of $93,414 per single track mile as the average throughout the old city, or a total for the old city of $16,030,922, or for the old city and old annex of.....$17,171,065

The third method suggested was a comparison of the railway easements with those of the Gas Company. The railways company claims that surface privileges in the streets are held to be worth twice as much as sub-surface privilege, and that as the average space occupied by a single track of the railways is five times the average space occupied by gas mains, the railway easements are worth ten times as much as the Gas Company easements. Also that a row of railway trolley poles with feeder wires, trolley wires and one-half the span wire system would be equal to a single pole line of the Gas Company of equal length. On the basis of this comparison it gets a total value for railway and pole line easements of $72,000 per mile. Applying this figure to the railway mileage in the old city and old annex, it arrives at an easement value in this territory of.....$16,996,032

Averaging the three values thus found for the old city and old annex together, the sum reached by the company is $16,584,780, or a total for all the easements within the city of Baltimore of $17,816,292, which is the company's claim.

Singularly enough this equals the capitalization of the park tax paid by the company for 1923, at approximately 6½ per cent.

COMMISSION'S BASIS FOR VALUING EASEMENTS

The Commission cannot accept any of these methods of arriving at the value of the company's easements. If these easements were owned in fee simple and the company had the exclusive use of them it would hesitate to apply any such method or methods in determining their value. As it is, the company has only *an interest* in that part of the public highways occupied by its tracks, and not an outright ownership, and it can only use that part of the highways occupied by its tracks, in common with other vehicles operating over the highways. Therefore the method used in arriving at the fair value of the private rights of way, owned by the company, cannot, the Commission holds, be applied to easements generally.

The Commission feel that a method, fair alike to the people and the company is to be found in the plan adopted by the Commission in 1913 in valuing the easement of the Gas Company. In that case it fixed as the easement value, the value at which the easements were taxed.

While it is true that all of the easements of the Railways Company in Baltimore city have not been covered by the compromise values, established by the Railways Company and the Appeals Tax Court of Baltimore, as a result of the decisions in the Court of Appeals which established easements as an interest in the soil and made them taxable as real estate, a value for taxation purposes was reached for such mileage in the old and new annexes as was not subject to the park tax. Those values, as already stated, were $12,500 per mile for the new annex and $17,692 for the mileage in the old annex.

It is the Commission's belief that the easements in the old city are more valuable than those in the old annex, as those in the old annex are more valuable than those in the new annex. This is indicated by the different values put upon easements in the annexes for purposes of taxation. Therefore, it adopts the figure of $12,500 per mile as the value of easements in the new annex, and $17,692 a mile as the value of the easements in the old annex. Also, it increases the value of the easements in the old annex by substantially the same percentage of increase (about 40 per cent), as is indicated in the value of old annex easements over new annex easements, thereby reaching a figure of $25,000 per mile, which it applies to the easements in Baltimore City as it was prior to the annexation of 1888, and which it believes to be a fair value for them. It also adopts the figures of the company for the value of its easements in the County, or.....$368,662

On this basis, which the Commission believes to be certainly as reasonable, and as no more arbitrary than that adopted by the company, the Commission reaches the following results:

County easements (Company's Claims)	$368,662
New Annex easements (90,521 miles) at $12,500 per mile	1,131,512
Old Annex easements (67,612 miles) at $17,692 per mile	1,196,191
Old City easements (171,558 miles) at $25,000 per mile	4,288,950
Total	$6,985,315

The Commission adopts this method of indicating the value of the company's easements, and finds the value of these easements to be.....$7,000,000

OTHER ISSUES

Three issues which had nothing to do with valuation were brought up at the hearing. One of these involved the rerouting of the street cars of the Railways' system, another involved the removal of the one-man cars from the Halethorpe line, and the other involved the issuing of a weekly pass at a fixed rate, the pass entitling the holder to as many rides he cared to make.

The rerouting problem was referred to a special traffic committee headed by Clarence W. Miles, People's Counsel, as chairman. Its recommendation for street car rerouting will soon be passed on by this Commission after the necessary public hearings shall have been held. The one-man car problem has been considered by this special traffic committee, and it has made recommendations which may solve it.

As to the weekly pass proposition, this Commission feels it would be unwise to require the Railways' Company to embark on such an experiment. Proponents of the weekly pass idea testified that it was "a gamble," that there was no way of checking the results of the pass upon the revenues of those companies in other cities, but their general impression was that it had been helpful.

In view of the testimony submitted, this Commission does not feel justified in requiring the company to issue such a pass or ticket, and it would hesitate to approve such a plan if it were proposed by the company, on the ground that it would be a marked departure from the plan of measured service, under which the patron of a utility pays for what he receives, and toward the plan of unlimited service for a fixed charge or flat rate.

As the period for which the present rate of fare was ordered to remain in force expires with the determination of the present case, and as the rate of fare was not an issue in the valuation proceedings, the Commission will, in its order which accompanies this opinion, require the continuance of the present base rate fare of seven and a half cents when tickets or fare checks are purchased, or eight cents cash; until April 30, 1928, with the provision that if any proceedings involving the rate of fare be pending at the expiration of that period, then the present rate will be continued for an additional period of six months unless such proceedings shall be terminated before the expiration of that time.

An order will be entered in accordance with the conclusions herein.

Public Service Commission of Maryland, Chairman West and Commissioner Whitman.

COMPARISON OF ESTIMATES OF PEOPLE'S COUNSEL AND OF RAILWAYS C
REPRODUCTION, PRESENT CONDITION AND GOING VALUE, B
UNITED RAILWAYS

Account		Cost to Reproduce N	
	PHYSICAL PROPERTY	People's Counsel	Railways
502	Right of Way	$167,576	$745,719
503	Other Land Used in Electric Railway Operations	1,336,380	1,850,662
504	Grading	1,836,582	2,239,931
505	Ballast	1,752,803	2,093,940
506	Ties	1,292,828	1,537,461
507	Rails, Rail Fastenings and Joints	3,422,424	4,050,495
508	Special Work	2,514,331	2,993,016
510	Track and Roadway Labor	3,663,490	4,825,215
511	Paving	2,755,465	3,297,811
512	Roadway Machinery and Tools	119,842	119,842
515	Bridges, Trestles and Culverts	1,307,327	1,281,419
516	Crossings, Fences and Signs	88,983	97,094
517	Signals and Interlocking Apparatus	137,579	153,583
518	Telephone and Telegraph Lines	289	305
519	Poles and Fixtures	1,138,441	1,338,820
520	Underground Conduits	189,464	219,723
521	Distribution System	3,256,822	3,852,902
523	Shops and Carhouses	4,207,565	4,441,435
524	Stations, Miscellaneous Buildings and Structures	318,324	340,799
526	Park and Resort Property	489,272	608,574
529	Other Expeditures— Way and Structures, Trackless Trolley Construction	45,676	45,676
530	Passenger and Combination Cars	10,527,765	12,009,033
531	Freight, Express and Mail Cars	39,322	52,094
532	Service Equipment	477,729	454,148
533	Electric Equipment of Cars	5,747,935	6,087,930
536	Shop Equipment	350,596	350,595
537	Furniture	270,721	270,720
538	Miscellaneous Equipment	153,012	153,012
539	Power Plant Buildings	43,325	46,095
540	Substation Buildings	448,061	478,810
542	Power Plant Equipment	169,972	169,972
543	Substation Equipment	1,837,859	1,837,859
544	Transmission System	642,083	759,898
	Total	$50,759,843	$58,804,588
	OVERHEADS		
501	Engineering and Superintendence	3,299,975	2,940,229
546	Law Expenditures	253,799	1,176,092*
547	Interest During Construction	4,587,296	7,393,097
549	Taxes	462,229	462,229
550	Miscellaneous	2,539,240	1,826,832**
	Cost of Financing	3,166,425	4,476,184
	Total	$14,308,964	$18,274,663
	Total of Physical Property and Overheads	$65,068,807	$77,079,251
	Working Capital	1,400,000	2,000,000
	Total	$66,468,807	$79,079,251
	Going Value	6,506,881	16,000,000
	GRAND TOTAL	$72,975,688	$95,079,251

*Includes Administrative and Legal Expense.

**Includes C

ESTIMATES OF PEOPLE'S COUNSEL AND OF RAILWAYS COMPANY WITH FINDINGS OF PUBLIC SERVICE COMMISSION OF MARYLAND AS TO COST OF ODUCTION, PRESENT CONDITION AND GOING VALUE, BUT WITHOUT EASEMENTS, AS OF DECEMBER 31, 1923, OF THE PROPERTY OF THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE.

Account	Cost to Reproduce New			Per Cent. Condition			Cost to Reproduce New Less Depreciation		
SICAL PROPERTY	People's Counsel	Railways	Commission	People's Counsel	Railways	Commission	People's Counsel	Railways	Commission
.....	$167,576	$745,719	$248,573	100%	100%	100%	$167,576	$745,719	$248,573
in Electric Railway Operations	1,336,380	1,850,662	1,748,417	100	100	100	1,336,380	1,850,662	1,748,417
.....	1,836,582	2,239,931	2,210,453	87.2	100	100	1,600,397	2,239,931	2,210,453
.....	1,752,803	2,093,940	1,967,588	95	84	80	1,665,163	1,758,910	1,574,070
.....	1,292,828	1,537,461	1,435,507	65	84	80	840,338	1,291,467	1,148,406
nings and Joints.....	3,422,424	4,050,495	3,849,014	72	80	80	2,464,145	3,402,415	3,079,211
.....	2,514,331	2,993,016	2,814,396	67	84	80	1,684,602	2,514,133	2,251,516
way Labor.....	3,663,490	4,825,215	4,583,955	65	84	80	2,381,269	4,053,181	3,667,164
.....	2,755,465	3,297,811	3,165,038	80	84	80	2,212,372	2,770,161	2,532,030
ry and Tools.....	119,842	119,842	119,842	70	70	70	83,889	83,889	83,889
and Culverts.....	1,307,327	1,281,419	1,281,419	80	82	82	1,045,862	1,046,474	1,050,764
and Signs.....	88,983	97,094	88,983	87	89	87	77,415	86,601	77,415
locking Apparatus.....	137,579	153,583	145,897	90	98	95	123,821	150,511	138,602
legraph Lines.....	289	305	305	90	90	90	260	274	275
.....	1,138,441	1,338,820	1,195,363	85	91.5	90	967,675	1,225,020	1,075,827
ults	189,464	219,723	219,723	95	96	95	179,991	210,934	208,737
m	3,256,822	3,852,902	3,549,645	88	89	88	2,866,003	3,449,118	3,123,688
es.....	4,207,565	4,441,435	4,350,000	71.3	93	87	2,997,029	4,127,027	3,784,500
eous Buildings and Structures	318,324	340,799	335,598	79.7	90.6	85	253,704	308,452	285,258
Property.....	489,272	608,574	510,877	73.7	90.6	80	360,593	551,190	408,702
s—									
ctures.									
ley Construction	45,676	45,676	45,676	90	90	90	41,108	41,108	41,108
mbination Cars.....	10,527,765	12,009,033	11,486,901	70	90	85	7,369,436	10,824,518	9,763,866
nd Mail Cars.....	39,322	52,094	49,829	50	90	80	19,661	46,885	39,863
.....	477,729	454,148	487,237	55	80	80	262,751	363,318	389,790
t of Cars.....	5,747,935	6,087,930	6,087,930	70	90	85	4,023,554	5,479,137	5,174,741
.....	350,596	350,595	350,595	80	80	80	280,477	280,476	280,476
.....	270,721	270,720	270,720	80	80	80	216,577	216,576	216,576
pment	153,012	153,012	153,012	65	60	60	99,458	92,007	991,807
lings	43,325	46,095	45,500	65	93	85	28,115	42,868	38,675
gs	448,061	478,810	473,822	81	93	85	363,891	445,296	402,749
ment	169,972	169,972	169,972	70	76	70	118,890	127,479	118,980
ent	1,837,859	1,837,859	1,837,859	85	92	90	1,562,180	1,690,830	1,654,073
em	642,083	759,898	718,046	90	90	90	577,875	683,908	646,241
.....	$50,759,843	$58,804,588	$55,997,692	75.3	88.7	85	$38,272,547	$52,181,743	$47,556,442
VERHEADS									
perintendence.....	3,299,975	2,940,229	2,799,884	100	100	100	3,299,975	2,940,229	2,799,884
.....	253,799	1,176,092*	559,977	100	100	100	253,799	1,176,092*	559,977
onstruction.....	4,587,296	7,393,097	5,072,717	100	100	100	4,587,296	7,393,097	5,072,717
.....	462,229	462,229	462,229	100	100	100	462,229	462,229	462,229
.....	2,539,240	1,826,832**	3,589,186	100	100	100	2,539,240	1,826,832**	3,589,186
.....	3,166,425	4,476,184	.....	100	100	...	3,166,425	4,476,184	.....
.....	$14,308,964	$18,274,663	$12,483,993	100	100	100	$14,308,964	$18,274,663	$12,483,993
Property and Overheads.....	$65,068,807	$77,079,251	$68,481,685	80.7	91.4	87.7	$52,581,511	$70,456,406	$60,040,435
.....	1,400,000	2,000,000	1,500,000	100	100	100	1,400,000	2,000,000	1,500,000
.....	$66,468,807	$79,079,251	$69,981,685	81.2	91.6	88	$53,981,511	$72,456,406	$61,540,435
.....	6,506,881	16,000,000	8,560,210	100	100	100	6,506,881	16,000,000	8,560,210
TOTAL	$72,975,688	$95,079,251	$78,541,895	82.9	93	89.2	$60,488,392	$88,456,406	$70,100,645

tive and Legal Expense.

** Includes Organization Prior to Construction—$1,794,132 and Insurance During Construction—$62,694.

DISSENTING OPINION

Before the Public Service Commission of Maryland.

CASE No. 533

In the Matter of the Valuation of the Properties and the Investigation of the Capitalization and Affairs of The United Railways and Electric Company of Baltimore, on the Motion of the Commission Under Authority Conferred by Section 30 of the Public Service Commission Law.

HARPER, Commissioner (dissenting):

In the action of my colleague in allowing a value of $7,000,000 for easements in the valuation of the property of The United Railways and Electric Company of Baltimore I am unable to concur, and I am compelled to dissent from their decision upon that subject. The inclusion of a value for easements in the rate base will have a far-reaching effect upon the valuation of the property of public service corporations in this State and will result in the imposition of a burden upon the rate payers to which I am unwilling to give my assent. In view of the importance of this subject, I feel justified in stating the reasons which lead me to the conclusion that no allowance whatever should be made for easements.

When, during the course of the consideration of the record in this case by the members of the Commission the question of easements was taken up, I took the position that no allowance should be made, that being the conclusion I had definitely reached, and in support of that position I submitted to my colleagues a memorandum of my reasons and of the authorities relied upon to sustain my contention that no value for easements should be included in the rate base. They then proposed that the advice of the Attorney General of Maryland on this point should be sought. This I opposed, for the reason that in

my opinion the question as to what, if any, allowance should be made for easement is one for determination and decision by the Commission, just as the many other important issues in the case, involving legal, engineering and accounting questions, must be decided by it. My colleagues, however, decided to request the advice of the Attorney General, and a letter was addressed to him asking him if, in his opinion, the Commission should include in the valuation of the property of The United Railways and Electric Company of Baltimore any allowance for the easements of the company in the public highways. On February 11, 1926, Attorney General Robinson advised the Commission that he was unable to see how the Commission could avoid including the value of the easements owned by the company in the streets of the city in determining the value of its property for rate making purposes.

For the opinion of Attorney General Robinson I have the highest respect, and it is with great reluctance that I feel compelled, in adhering to the conclusion I had reached, to take a position which is at variance with his views upon this question.

The subject of easements presents one of the most important issues for determination in this case. The significance of this element is evidenced by the claim of The United Railways and Electric Company for approximately $18,000,000, and by the fact that a value of $7,000,000 is allowed therefor in the decision of the majority of the Commission. The capitalization of easements as a part of the fair value of its property used in the public service is urged by United Railway in reliance upon Wilcox vs. Consolidated Gas Company, 212 U. S. 19, and the Maryland tax cases, Consolidated Gas Company vs. Mayor and City Council of Baltimore, 101 Md. 541 and 105 Md. 43; and United Railways and Electric Company vs. Mayor and City Council of Baltimore, 111 Md. 264.

In Wilcox vs. Consolidated Gas, the United States Supreme Court allowed a value of $7,781,000 for *franchises,* but on grounds which cannot be said to exist in the case at issue. In 1884, under a law of that year, the several gas companies operating in different sections of New York City combined to form the Consolidated Gas Company of New York. The statute authorizing the combination pro-

vided that the capitalization of the consolidated company should not exceed the "fair aggregate value of the property, franchises and rights of the several companies to be consolidated." The valuation on which the consolidation was effected included an element of $7,781,000 for the franchises of the companies united. This valuation was sanctioned by law, followed by the organizers in the capitalization of the consolidated corporation and stood as a factor on which the stock was dealt in for more than twenty years.

The Circuit Court of the United States for the Southern District of New York allowed a value of $12,000,000 for the franchises. This was determined by increasing the franchises in the same proportion in which the tangible property had grown. The Supreme Court objected to a revaluation of the franchises as opposed to the principles of valuation for rate purposes, but allowed the sum of $7,781,000 fixed and agreed upon under the Act of 1884. To guard against the misuse of this allowance as precedent the court explained its position as follows:

> "What has been said herein regarding the value of the franchises in this case has been necessarily founded upon its own peculiar facts, and the decision thereon can form no precedent in regard to the valuation of franchises generally, where the facts are not similar to those in the case before us. We simply accept the sum named as the value under the circumstances stated."

In no sense were the franchises valued in the accepted meaning of the term for rate purposes. The language of the court manifests its disapproval of any effort in this direction. The franchises were included at what is to be construed to be their *investment cost* and not at any form of appraised value. Although it is this point which sharply differentiates the Wilcox case from that of United Railways, the latter endeavors to establish as fact that the franchises were obtained under conditions which makes its case tronger than that relief upon as authority.

It is clear that the court in Wilcox vs. Consolidated Gas did not reply upon the assessed value of franchises for tax purposes as a measure of their value for rate determination. The Court specifically said:

> "The fact that the state has taxed the company upon its franchises at a greater value than is awarded there here is not material. Those taxes, even if founded upon an erroneous valuation, were properly treated by the company as part of its operating expenses, to be paid out of its earnings before the net amount could be arrived at applicable to dividends, * * *"

In the contention that the case of United Railways is stronger than that of the New York utility, two reasons are cited by Railways.

> "In the first place, it is undisputed that the *franchises* were not pure gratuities. In order to secure them the Baltimore City Passenger Railway Company agreed to buy out the previously existing omnibus lines, agreed to furnish an iron tramway for other vehicular traffic, agreed to maintain the paving which would be worn out not only by its own service, but by the other vehicular traffic attracted to the iron tramway, and finally agreed to make the City a preferred participant in the gross receipts to the extent of 20 per cent." (Italics mine.) (Pages 102 and 103 of Railways' Brief.)

Such forms of consideration cannot be accepted as indicative of the rate determining value of easements, neither can they be construed as considerations for the easements. It is clear that whatever the Baltimore City Passenger Railway Company may have agreed to do, any such agreement was for the purpose of obtaining the franchises as such.

The second reason advanced is that "while the New York franchises were regarded as intangible personal property, the thing which we are discussing in Maryland is an interest in real estate * * *" In urging a difference between franchises and easements, and recognizing that the promises were made in order to secure the former, the Railways Company cannot convert the franchises into easements or the consideration for the franchises into consideration for the easements. It is not said, neither can it be implied, that a certain agreement was made in order to secure franchises *and* easements. If it be argued that the easements flow from the fran-

chises, then, as the stream can rise no higher than its source, and, as franchises were taken into the rate base at no more than cost, the same rule applies to the easements.

The third point, by reason of which Railways claims a stronger case than that found in Wilcox vs. Consolidated Gas, is that "the highest legislative authority in the State, the General Assembly of Maryland, expressly confirmed the grant of these franchises to the Baltimore City Passenger Railway and provided that they should remain in the hands of the Railways in perpetuity unless they were taken from the Railways by municipal acquisition, in which case the municipality should pay a fair value therefor." Again, the element discussed is franchises and not easements. The argument advanced relates exclusively to franchises, and courts and commissions have declared repeatedly that even though franchises here value for various other purposes they are not to be valued as a part of the rate base.

The fourth point of Railways is expressed as follows:

> "There was not at the time of the consolidation a direct announcement of the value at which the easements were taken over. There was no doubt, however, in the minds of the general community or of anyone who now studies the situation that the easements were one of the chief elements in determining the price to be paid for The Baltimore City Passenger and The Baltimore Consolidated properties." (Page 104 of Railways' Brief.)

The first sentence of this quotation is in conflict with Railways' arguments in support of a value for easements. As no reference was made to easements, it cannot be assumed that they were considered as a separate element. If a value had been attached to the easements, apart from the franchises, it is more reasonable to assume that such a drastic departure from the generally accepted principles of valuation for exchange purposes would have been specifically announced. The principle of a separate value for easements arose in the tax cases several years after the railway properties were consolidated, and it is difficult to see how there could have been in the minds of the

general community any thought that the easements were one of the chief elements in determining the price to be paid. If any intangible element was considered it doubtless was the franchise and not the interest in real estate in the form of easements.

The United Railways endeavors to place the official sanction of the State upon the terms of the purchase.

> "There remains still to be considered the fact that the State has given official recogntion to the terms of this purchase. In 1910, in the very act creating this Commission, it provided that so far as possible in fixing a value of a utility property the Commission should protect the value of bond already issued." (Page 104 of Railways' Brief.)

The Consolidation was in 1899; the act creating the Commission was passed in 1910 without specific reference to United Railways. The desire to protect security holders has no relation whatever to State approval of the terms of the consolidation. The provision of the Public Service Commission Law that "as far as possible" the Commission shall not disturb the value of the bonds of a corporation issued prior to the passage of the Act, can only be interpreted to mean within the bounds of reason and equity to all interested parties, of which the car riding public is one. There was no mandamus ordering the Commission to find a value for rate making that would fully support all outstanding securities. Assuming that the $32,000,000 in mortgage and income bonds referred to on page 104 of Railways' Brief were issued for real values, they were issued in conformity with the income capacity of the business and the exigencies at the time of issue. There is no evidence that the easements were a dominant consideration or any consideration at all. Even though they were, there was never official sanction of the amount at which they were capitalized and the Commission would not be bound by such action.

In presenting the equitable side of the proposition for the inclusion of easements, it is contended that the public granted the easements with the full expectation that they would be capitalized. Nevertheless, it is admitted that if a new company were organized today and given ease-

ments without charge, the grant would provide that the easements could not be capitalized for rate purposes. (See page 105 of Railways' Brief.) The public mind as constituted forty years ago was hardly different from that of today on the question of expecting a private corporation to capitalize, against public interest, the gratuities of the public. Neither may it be said that the gifts were made with the expectation that they would be capitalized at the expense of posterity. If the public mind of today is any evidence of what it was a generation ago, it is difficult to conceive that there could have been any such expectation as that submitted for the Commission's consideration.

Coming, now, to the reliance of Railways upon the tax cases as authority for capitalizing easements, the distinction made by the Maryland Court of Appeals between franchises and easements is clear and definite. Consolidated Gas Company vs. Mayor and City Council of Baltimore, 101 Md. 541 and 105 Md. 43; and United Railways and Electric Company vs. Mayor and City Council of Baltimore, 111 Md. 264. It must be recognized that the franchise is personal property and that the easement is an interest in land. These are two separate forms of property rights and are to be considered as such.

> "*The right* to occupy the streets with gas mains is a *franchise*—the actual *occupation* of them in that way pursuant to the franchise is the acquisition of an *easement*. * * *"

> "* * * * The naked, unused, slumbering franchise is property, but it is property concerning the assessment of which *in that condition* for purposes of taxation the statutes do not make provision, otherwise than by including it as an element which enhances the value of the shares of the capital stock. But when the franchise is brought into activity and is availed of to accomplish the ends it was designed to effect, the property acquired under it becomes amenable to the tax laws apart from the tax on the stock and its value, as an easement, if an easement it be, may be largely augmented by the use to which the franchise enables that property or easement to be put." 101 Md. 546, 547, supra.

But the fact that franchises and easements are two forms of property interests does not necessarily place one under certain rules of valuation for rate determining purposes and the other under entirely different principles. Even though they are different according to our concepts of property, they are nevertheless so alike and so closely and inseparably related that in a valuation proceeding, such as is before us, the two cannot be divorced and made subject to contradictory methods and principles.

The franchise of a street railway company confers privileges and is granted with the expectation that these privileges will be exercised to occupy the public streets and render a transportation service. The franchise would be worthless if it failed to carry this right and would soon expire. Antecedent to the easement is the franchise grant without which the power would be nonexistent. Courts and commissions, generally, recognize the indestructible relationship between these two stages. In the case of People vs. Tax Commissioners, 174 N. Y. 441, quoted with approval in the Maryland tax case, 101 Md. 541, the New York Court of Appeals declared that "the value of either (franchise or easement) resides in the union of both and can be practically ascertained only by treating them as a unit. And in The United Railways and Electric Company of Baltimore vs. Mayor and City Council of Baltimore, 111 Md. 268, the Maryland Court of Appeals said, in discussing taxation of easements, "In fact, so closely related are special franchises and easements, the one to the other, that until easements came recently within a few years past, to be recognized as a distince species of property subject to taxation, these terms were frequently used as synonymous." And speaking of the statute by which the Park Tax was imposed, the Court declared, "The extent of the enjoyment of the franchise furnishes a satisfactory basis for ascertaining the amount of the tax to be paid for the easement as well as for the franchise, and we are unable to say that in passing the Act of 1882, Chapter 229, the Legislature intended to distinguish between these two so closely connected kinds of intangible property." 111 Md. 270, Supra. In Louisville vs. Cumberland Telephone

and Telegraph Company, 224 U. S. 661, the Court, in referring to franchises granted the company, said, "Among those thus held was the right to use the streets in the city for the purpose necessary in conducting a telephone business. Such a street franchise has been called by various names—an incorporeal hereditament, an interest in land, an easement, a right of way,—but, howsoever designated, it is property."

In the decisions of courts and commissions in most jurisdictions, no distinction has been drawn between the franchise of the utility and the easement acquired through the franchise. So that in cases involving the ascertainment of fair value, where the state or municipality grants to the utility a franchise conferring the right to construct upon the streets and public highways tracks and poles or to install mains and conduits beneath the surface thereof, this franchise is looked upon and dealt with as including and embracing all the rights in such streets and highways which the utility afterwards acquires.

In the Maryland tax cases, there was before the Court of Appeals not a question of valuation of easements for all purposes but of valuation for the sole purpose of taxation. The Court was discriminating in its language and was careful to guard against a too broad application of its views. The Court expressly stated, "It is a question of taxation which is before us." 101 Md. 545. After thus carefully defining the general question, the Court, in further explanation of its position, continued, "the use to which a franchise permits an easement to be put, is an essential element to be considered in placing a valuation on that easement for purposes of taxation." The scrupulous care with which the Court accepted easements as a tax basis and recognized a value for that purpose alone, precludes a conclusion that the Court placed its sanction upon the valuation of easements for rate purposes. The Court was passing upon a specific point, taxation, and not upon value for rate-making.

The next significant step in the development of the opinion of the Maryland Court of Appeals was the declaration that, even in the realm of taxes, franchises

and easements are closely akin. At 101 Md. 547, there was quoted the Court of Appeals of New York in People vs. Tax Commissioners, 174 N. Y. 441, where it was said, "They (tangible chattels in the public highway), have no assessable value worthy of notice except through the actual and constant use made of them as incidental to the special franchises. The value of either resides in the union of both and can be practically ascertained only by treating them as a unit. * * * We regard the tangible property as an inseparable part of the special franchise mentioned in the statute, constituting with them a new entity, which as a going concern can neither be assessed nor sold to advantage except as one thing, single and entire." In explaining the application of this statement, the Maryland Court continued, "We cite this to show, if precedent be needed to support such a self-evident proposition, that the use to which a franchise permits an easement to be put, is an essential element to be considered in placing a valuation on that easement for purposes of taxation."

In United Railways Company vs. Baltimore City, 111 Md. 264, the language of the Court of Appeals is clearer and more emphatic. One paragraph from that decision serves further to make clear the position of United Railways at that time.

> "The Railways Company has brought this appeal, conceding, as we have said, that under the decisions of this Court, such property is subject to taxation, but claiming that in this case the tax on gross receipts, above mentioned, known as the Park Tax (because the proceeds are required to be applied to the maintenance of the public parks of the city), is itself a complete and adequate tax on the easements enjoyed by the Railway Company in the highways of Baltimore, and that these easements are thereby exonerated from any further taxation under the existing laws of the State." (Page 267 of Court Opinion.)

But how, it may be asked, does the Park Tax relate franchises and easements? Several statements serve to establish this point.

"We, of course affirm what was said in those cases, to the effect that the Park Tax was a franchise tax exacted in exchange for the privilege accorded the street railway companies to lay their rails and run their cars upon city streets. But the language of these cases must be considered with reference to the questions then before the Court. In none of them was any question concerning the separate taxation of easements as distinguished from franchises presented." (Page 268 of Court Opinion.)

The last sentence may appear to break down the relationship, but in reading further it is seen that the Court meant to show that the Park Tax, accepted as a franchise tax, exonerated the company from an easement tax because of its equivalency to the former.

"We do not think therefore that the three *Park Tax Cases* can fairly be said to deny the contention that the nine per cent. tax on gross receipts did include as an element thereof a tax upon the easements enjoyed by the appellant in the highways of Baltimore City." (Page 268 of Court Opinion).

"But leaving out of consideration the additional burdens and charges above mentioned, and having regard to the tax on the gross receipts imposed by the Act of 1882, Chapter 279, alone, when we reflect that such tax reaches every nook and corner of value in the easements, as well as in the franchises of the corporation; that the amount of the tax is equivalent to a direct property tax on an assessment of over $2,000,000; that there could scarcely have been a thought in the legislative mind at that time (1882) of taxing the easement separately as property distinguished from the franchise, and that in fact no effort was made to tax easements for a period of twenty-five years thereafter, we think the inference is irresistible that the Legislature did not then contemplate a tax on the easements enjoyed by the street car companies now composing the appellant, in addition to the gross receipts tax which by that Act it imposed upon them. A tax on gross receipts necessarily involves the idea of the user of the fran-

chise, for without such user no receipts would be earned." (Page 269 of Court Opinion.)

And finally comes the most convincing statement of all, previously quoted as evidence that the Court of Appeals recognized a close relationship between franchises and easements for tax purposes.

> "The extent of the enjoyment of the franchise furnishes a satisfactory basis for ascertaining the amount of the tax to be paid for the easement, as well as for the franchise, and we are unable to say that in passing the Act of 1882, Chapter 279, the Legislature intended to distinguish between these two so closely connected kinds of intangible property." (Page 270 of Court Opinion.)

In view of the association of franchises and easements, established by the Court of Appeals, the identity of the two for rate determining purposes is even more obvious and essential in law and equity. When a franchise is given by the public to a street railway company, it is with the full expectation and intention that the company will lay its tracks and operate its cars upon the streets. The franchise is the contribution which the public makes to the business of the utility. It is given in order that it may be used and exercised for the public benefit. New York Electric Lines Company vs. Empire City Subway Company, 235 U. S. 194. The public not only grants the right, the privilege to use, but the easement resulting from the use, the thing which it was intended that the company should acquire, likewise issues from the public. Furthermore, when a street railway company engages in the business of public transportation as a common carrier, it is performing an undertaking in the nature of a governmental function. To conduct the business for which the company is formed, it is indispensable that there be acquired the right to lay tracks and run cars on the streets. The public confers this right in order that the company can put to their intended use the transportation facilities. Thus, the easement must inevitably follow the franchise and become an integral part of the broad rights of the utility, by whatever name they may be known, if the utility is to fulfill the role for which it was brought into being.

"When the public grants to the carrier the right to maintain its tracks along a public street it in essence assists the carrier to that extent in the discharge of its public duty. Certainly the public ought not to be taxed by reason of and in proportion to the assistance extended." Opinion of Interstate Commerce Commission in valuation of Texas Midland Railroad, Valuation Docket No. 2.

From the standpoint of exchange value, the franchise and easements may be, and almost invariably are, combined. In fact, no effort is usually made to differentiate between the two. Their exchange value is based upon the capitalized earnings which the exercise of the rights yield. It is only when the physical property is operated that a value attaches to the intangibles. It is the use to which the franchise and easement are put that gives them value. That is the necessary, the essential condition. The mere franchise right to use a street may, when unused, have little if any value; but, when the right is exercised to occupy the streets, it may become a thing of considerable value. The value of the right when unused is potential; when in use it is real. Thus, as has been explained before, the larger value is but the product of a higher stage in the development and exercise of certain fundamental rights.

Because of the indisputable fact that "the value of either (franchises or easements) resides in the union of both," it becomes impossible to dissociate them and measure them separately in determining the fair value of a public utility for rate purposes. If franchises or easements were *valued* for rate purposes, there would be only one possible method, and that would be a capitalization of earnings. But it is at once evident that this is an impracticable method in passng upon utility rates or upon fair value as a criterion of the reasonableness of rates. The earnings which give value to franchises and easements are dependent entirely upon the rates charged. But the ultimate question before the Commission is the reasonableness of these rates, the rates and the earnings resulting therefrom cannot be used in arriving at value. To do so would invariably justify the rates charged and, in fact, would lead to higher rates because values would

be pyramided to a point at which the rates would be all the traffic could bear. As the extent of the earnings determines the worth of the franchises and easements, if the earnings are small, the franchises and easements have little value. When earnings increase, there is an appreciation in value. As the earnings are produced through rates paid by the public, if a value for franchise or easements were included in the rate base and a greater income claimed in order to produce a return on the added value, there would be necessitated an increase in rates. Since the increase in rates would bring higher earnings, this in turn would increase value still further. Thus, there results an absurdity. If there is an element to be valued, there must be a reasonable, equitable and practicable method. In Georgia Railway and Power Company vs. Railroad Commission of Georgia, 278 Fed. 242, P. U. R. 1922, C, 744, the United States District Court for the Northern District of Georgia, in passing upon the capitalization of franchises, expressed this view as follows:

> "The absurdity of so regarding it becomes further evident in attempting to value it in rate fixing; for it it has a value, as is usually stated, because it enables its possessor to earn larger returns than can be attributed to a fair return upon his physical and other intangible property, its value being the capitalization of this excess, a rate could never be reduced. To reduce it would be necessarily to decrease and impair the value of the franchise, because its earning power had been reduced. The owner of the public franchise, for which the grantee paid nothing, except what he invested in the business established under it, is not entitled to have the value of the franchise included in the estimate of his property taken for public use in fixing the reasonable rate to be charged under the franchise. If the franchise were purchased by a payment to the public other than in the investments in the business, such payment, of course, would be an additional investment to be regarded. Nor is the fact that the franchise is taxed as property material. Neither the fact nor the amount of taxation is of any consequence to the owner, because the tax paid is

allowed as an expense of business and passed on to the customer."

But, it is suggested by Railways that the easements should be taken into the rate base at their taxable value. It is plain from the many valuation cases that tax value is seldom acceptable as fair value in deciding upon the reasonableness of rates. The utilities would be the first to revolt against the general application of such a principle, and if the principle has merit it should be susceptible of a broader application than to easements alone. It might with equal force be applied to the tangible property.

By unquestionable judicial authority franchises are not *valued* for rate purposes. When included in the rate base, they are included at cost. In the case of Georgia Railway and Power Company vs. Railroad Commission, supra, the United States District Court for the Northern District of Georgia decided, and was later sustained by the United States Supreme Court, that in the valuation of the property of a gas company the value of the franchises of the company was properly excluded. The following extracts from the opinion in this case clearly set forth the position of the court:

"In estimating the value of the property whose use is taken, the Commission excluded from consideration the value of the franchises of the gas company, we think correctly. That the charter is a contract upon sufficient consideration, that the franchises granted under it are private property, vendible and taxable as such cannot be disputed that they may not be taken from the owners for public purposes, or used adversely to the owners for such purposes, without just compensation, will not be denied. But the fixing of a just and reasonable charge to be made by a public service corporation is neither the taking from it of these franchises, nor the use of them, in the sense of the Constitution. * * *"

"* * * Regulation is no more than a form of sovereign visitorial power. It does not deprive the owner of his franchise, nor take it or its use from him, but directs it to its proper and only legal use, to wit, the service of the public and the earning for

its owners of just and reasonable returns. While used in the public service, like the other property devoted thereto, the franchise is not, like the other property, taken from other service of the owner. It is the public's own contribution to the business, whatever its value therein, and not a thing that either party to the charter could justly think was to become a charge on the public in the fixing of reasonable rates. Otherwise, the more liberal and valuable the franchise granted by the public, the greater would be the burden of rates the public would have to bear."

The United States Supreme Court, in Georgia Railway and Power Company vs. Railroad Commission of Georgia, 262 U. S. 625, affirming the opinion of the District Court, said, in reference to the exclusion from the rate base of franchises and past losses from operation:

"Two objections to the valuation relate to the exclusion of items from the rate base, namely: the franchise to do business in Atlanta, said to be worth $1,000,000, and so-called losses from operation during recent years, alleged to aggregate $1,000,000. These items were properly excluded. The franchise in question is not a monopoly. It is merely a perpetual permit, granted by the legislature in 1856, to maintain gas mains in the streets, alleys and public places of Atlanta without the necessity of securing the consent of the municipality. That such franchises are to be excluded in fixing the rate base was settled by Cedar Rapids Gaslight Co. vs. Cedar Rapids, 223 U. S. 655, 669, 56 L. ed. 594, 604, 32 Sup. Ct. Rep. 389; Des Moines Gas Co. vs. Des Moines, 238 U. S. 153, 169, 59 L. ed. 1244, 1252, P. U. R. 1915 D, 577, 35 Sup. Ct. Rep. 811, and Galveston Electric Co. vs. Galveston, 258 U. S. 388, 66 L. ed. 678, 42 Sup. Ct. Rep. 351. The allowance for the franchise made in Willcox vs. Consolidated Gas Co., 212 U. S. 19, 43, 44, 48, was rested on special grounds which do not exist in this case."

See also the more recent case of Brooklyn Union Gas Co. vs. Prendergast, 7 F. (2d) 628.

Spurr, in his recent book on *Guiding Principles of Pub-*

lic Service Regulation, Vol. 1, p. 479, says: "After a considerable conflict of opinion as to the proper treatment of franchises in valuations of public service company property for rate making, the question must now be deemed to be settled; and the rule is that nothing is to be allowed for franchise value, in addition to the value of the physical property; but that whatever the company has paid for its franchise may be capitalized as a legitimate investment cost." Whitten, in his *Valuation of Public Service Corporations,* states this conclusion: "Practice in rate cases is practically unanimous against the inclusion of franchie value." (s. 699). See also Hartman on *Fair value,* p. 190; and Wyman on *Public Service Corporations,* Vol. 2, s. 1104.

Recent efforts have been made in other jurisdictions to have a value placed upon easements in rate inquiries, but all have failed. Commission have without reserve rejected such proposals as contrary to sound regulatory practice. In the case of Westinghouse Electric and Manufacturing Company vs. Denver Tramway Company, in the United States District Court for the District of Colorado, P. U. R. 1925B, 190, counsel for the receiver asked the master to value the street easements belonging to the tramway company and to make that value a part of the rate base. The Court said:

> "On the proof offered by the receiver, and there is none to the contrary, I find the value of those easements to be $2,000,000. But I agree with the master that their value cannot enter into the rate base."

And in the case of Potomac Electric Power Company vs. Public Utilities Commission of the District of Columbia, in the District of Columbia Supreme Court, P. U. R. 1920C, 345, the disapproval of the Court was more emphatic:

> "The Power Company further claimed that it had a right to include in the present fair value of its property the sum of $2,500,000 for what it designated as its easements in the public streets. Whether the privilege to use the public streets, which the Power Company possesses, should be called a franchise, a privilege or an easement, is of no consequence. The Power

Company claims that its actual occupation and use of the streets under this privilege gives it an easement therein, and gives to this easement a separate and distinct value which it has a right to capitalize as against the public. To claim that these so-called easements which cost the Power Company nothing, without which it could not perform its public duty, and which it is allowed to exercise to enable it to do so, can be capitalized against the consumer of its product in any sum whatsoever, is to make the public use destructive of the public right and effect a result which should not be tolerated by any judicial tribunal."

On appeal, the decree in this case was reversed by the United States Court of Appeals of the District of Columbia, but the reversal was based exclusively upon the failure of the Commission and the lower Court to consider reproduction cost as an element determining the fair value of the company's property. No reference was made to the exclusion of a value for the easements.

A claim for franchise value based upon the number of square feet of street space required for passage of cars over the public streets, and at a rate of value equivalent to that of the adjoining property fronting the street was rejected by the Oregon Commission in re Southern Pacific Company, P. S. C. Or. Order No. 1263, August 25th, 1925. The Commission said:

> "It is the Commission's conception that a franchise is a mutual agreement between the public and an agency undertaking public service, whereby the medium, by which service is rendered, is allowed, in common with other public uses, the right of use of the public streets. Such a contention that the public should presumably pay a return upon the right or gift extended by it, does not merit the serious consideration of a rate regulatory body."

Does the exclusion of a capitalized value for franchises and easement result in a confiscation of property? This is a question of paramount importance. Both franchises and easements are forms of property rights. By settled principle of law, franchises are not to be capitalized for

rate purposes. If the exclusion of one form of property right is not to be construed a confiscation, it must follow that the exclusion of a dependent right in a higher stage of development does not constitute confiscation. This is the accepted view in those jurisdictions, and they are many, in which franchises and easements are placed under the same rules of valuation procedure. If there were allowed a capitalization of easements at more than cost, the purpose of excluding franchises would be defeated.

Neither can it be contended that because the company is taxed on its easements they should be taken into the rate base. The exclusion of easements imposes no burden upon Railways. When the public chooses to levy a tax upon the carrier for the use of the streets, that tax must be borne by the car rider as a part of the operating expenses. This is the method used by Railways, and allowed by the Commission, in recovering the tax outlay. But the car riders, constituting a large section of the public, should not be called upon to carry the double burden of taxes and fair return on the assistance which it gives to the utility in exercising its function to serve. Obviously, this would be inequitable. A few figures will show the monetary signifiicance of this burden. The company claims a value of nearly $18,000,000 for its easements. If there were accepted the contention of the company that it is entitled to a return of eight per cent on the fair value of its property, and if the above value for easements were included in the rate base, the public, in addition to paying the park tax which, with the present volume of traffic, amounts to approximately $1,100,000 annually, would also pay a return of $1,440,000 on the easement value alone. At the rate of a six per cent. return, the latter amount would be $1,080,000. On the basis of the value of $7,000,000 allowed by the majority of the Commission in this case, the return which the public would pay would amount to $560,000 at the eight per cent rate, or $420,000 at the six per cent rate. A doubling of charges in this manner would be a violation of principles underlying the public regulation of rates and would be without its parallel in any phase of regulation.

In further support of the view that the taxability of easements does not necesitate their inclusion in fair value, there must be cited the case of franchises or, to use a more

extreme illutration, earnings. Both of these are taxed, yet neither is capitalized as a part of the rate base.

There remains to be considered a question of law which must be emphasized. The provision of the Public Service Commission Law prohibiting the Commission from authorizing the capitalization of franchises or the right to own, *operate or enjoy franchises,* shows clearly that it was the intention of the Legislature that franchises and easements were not to be included as part of the fair value of public service company properties. Section 27 of the Public Service Commission Law (codified as Section 381 of Article 23 of Bagby's Annotated Code of the Public General Laws of Maryland), which confers jurisdiction upon the Commission with respect to the issuance of securities by corporations subject to the provisions of the Act, including street railway corporations, provides that such corporations may issue securities for various specified purpose, provided there shall have been secured from the Commission an order authorizing such issue. One of the purposes so specified is described as follows:

> "or when necessary or desirable, in the discretion of the Commission, to cause the aggregate capitalization to conform to the fair value of the property of such corporation as established by the Commission pursuant to the provisions of Sec. 30."

It may be noted that Section 30 (codified as Section 385 of Article 23 of Bagby's Annotated Code of the Public General Laws of Maryland) deals with valuation and authorizes the Commission to determine the fair value of public service corporations.

Section 27 continues:

> "* * * provided, however, that the commission shall have no power to authorize the capitalization of any franchise to be a corporation or to authorize the capitalization of any franchise or right to own, operate or enjoy any franchise whatsoever in excess of the amount (exclusive of any tax, or annual charge) actually paid to the State or to a political sub-division thereof as a conideration for the grant of such franchise or right."

There is nothing in the language of Section 27 which makes a distinction between the mere right and the exercise and enjoyment of that right. On the contrary, it is evident that the Legislature comprehended in its restrictions both franchises and easements. The wording that the Commission shall have no power "to authorize the capitalization of *any franchise or the right to own, operate or enjoy any franchise whatoever,*" (italics mine) must be construed to reflect the legislative contemplation of the distinction made in the tax cases between franchises and easements. In possible anticipation of a play of terminology to draw a line in utility regulation between franchises and easements, the language of the Act was made broad enough to include the latter by whatever term may be known. This is demonstrated further by the parenthetical expression, "exclusive of any tax or annual charge." Why was there reference to a tax or annual charge? At the time the law was enacted, the park and easement taxes were in existence and the distinction had already been made between franchises and easements. The Legislature manifestly aimed to prevent a capitalization of these taxes or the sum upon which they were based "in excess of the amount actually paid to the State or to a political subdivision thereof."

If franchises and easements cannot be capitalized for the purpose of issuing securities, they cannot be in a fair value determination. Suppose, for illustration, if in ascertaining and establishing the fair value of one of such corporations pursuant to Section 30, the Commission should include therein the value of the easements of such Corporation, how could this be reconciled with the provisions of Section 27? Under Section 27 the corporation may issue securities when necessary or desirable, in the discretion of the Commission, to cause the aggregate capitalization to conform to the fair value so established, provided the Commission shall authorize it to do so. But it is expressly declared that the Commission shall have no power to authorize the capitalization of any franchise or right to own, operate or enjoy any franchise whatsoever in excess of the amount actually paid therefor.

After a careful review of the nature of franchises and easements, one is led, by the force of logic, equity and

law, to conclude that the capitalization of easements would be but a method of circumventing the prohibition placed upon the valuation of franchises. It is readily seen that if this were allowed, there would result a gross injustice to the public in general and the car rider in particular. To allow the company to include in its rate base any value by reason of its use of the streets would result in capitalizing against the public the exercise of rights and privileges granted the company and for which the public received no compensation. In the field of regulation, no rule or principle of valuation can equitably be invoked to justify such procedure. As was stated in the opinion of the New York Commission of the Second District, in Fuhrman vs. Buffalo General Electric Company, 3 P. S. C. R., 2d Dist. N. Y. 739:

> "If the franchise, which was a gift from the public to the company, should be made the basis of a money return, the practical result would be that the public would have to pay money to the company because it had given the company the right to occupy the public streets with its plant."

In the ascertainment of fair value, the franchises and easements should not be included as a part of the property upon which a return is allowed, except where it is shown that the utility paid for the franchises or easements, in which event they should be included at investment cost.

Although no allowance should be made for easements, there should be an allowance for the private rights of way occupied by United Railways. In presenting its case, however, the company elected to rely upon its broad claim for easements and did not submit complete evidence from which any definite value can be placed upon all the private rights of way. For this reason, upon the record now before us in the case and in the absence of further information, no specific value can be named for the private rights of way within the city limits.

ORDER NO. 10072.

Before the Public Service Commission of Marylana.

In the Matter of the Valuation of the Properties and the Investigation of the Capitalization and Affairs of The United Railways and Electric Company of Baltimore on the motion of the Commision Under Authority Conferred by Section 30 of the Public Service Commission Law.

CASE NO. 533.

The above entitled case having been duly heard and submitted and full investigation of the matters and things involved having been had and the Commission, on the date hereof, having rendered and filed an opinion containing its findings of fact and conclusions therein, which said opinion is hereby referred to and made part hereof.

It is, therefore, this 9th day of March, in the year Nineteen Hundred and Twenty-six, by the Public Service Commission of Maryland,

Ordered: (1) That the fair value for rate-making purposes of the property of The United Railways and Electric Company of Baltimore on December 31st, 1923, was Seventy-seven Million Dollars ($77,000,000), and such valuation shall be and become final unless protest against the same shall be filed with the Commission within ten (10) days from the date of this order, as provided by Section 30 of the Public Service Commission Law.

(2) That from and after midnight of March 9th, 1926, and until midnight of April 30th, 1928, and for no longer, unless such period be extended for a further period as hereinafter provided, or this Order be earlier modified or abrogated by further order of the Commission, The United Railways and Electric Company of Baltimore shall be permitted to charge and collect for the transportation of persons over its several street railway lines,

in Baltimore City and vicinity, the rates and fares as established and provided by the Commission's Order No. 8240 entered in Case No. 1682 on May 26, 1924, and in effect on the date hereof.

(3) That this Order shall be effective from and after midnight of March 9th, 1926, and until midnight of April 30th, 1928, and for no longer, unless such period be extended for a further period, or this Order be earlier modified or abrogated by further order of the Commission, provided that if there shall be pending before the Commission on April 30, 1928, any proceedings concerning the rates of fare of The United Railways and Electric Company of Baltimore, this Order and the rates of fare herein provided shall continue in full force and effect for a further period of six months, unless in the meantime the Commission shall have concluded its investigation and hearing in the said pending proceeding and shall have made effective its findings and Order therein.

(4) That The United Railways and Electric Company of Baltimore shall furnish to this Commission accurate and complete statements under oath, and in convenient form, setting forth the number of revenue and transfer passenger carried, and the number of car miles operated, the cash receipts from operation and other sources, and the operating and other expenditures of the Company, all set forth in the manner prescribed by the rules of this Commission for accounting by street railway companies, so soon as may be reasonably practicable and convenient after the end of each calendar month during the period this Order remains effective, and in no event later than the last day of the next succeeding calendar month, covering the operations of the company during the next preceding month.

(5) That the right of The United Railways and Electric Company of Baltimore to charge and collect the fares in this order prescribed shall be held subject at all times during the period covered by such order, or any extension thereof which may hereafter be granted as aforesaid to the right and power of this Commission to reopen this case in the light of the facts disclosed by the monthly reports aforesaid, or of other facts otherwise coming to the attention of this Commission and modify the rates of

fare by this order authorized to be charged and collected by the Company.

And It Is Further Ordered: That a copy of this order and a copy of the opinion hereinbefore referred to and filed herewith be forthwith served upon the said The United Railways and Electric Company of Baltimore, and that the said Company, within ten days from the date of the service of such copy, advise this Commission in writing whether or not it will accept and abide by the same.

HAROLD E. WEST,
EZRA B. WHITMAN,
Commissioners.

(G)

CASE NO. 533, OPINION FILED FEBRUARY 1, 1928, AND ORDER NO. 12630.

PUBLIC SERVICE COMMISSION OF MARYLAND

OPINION

Before the Public Service Commission of Maryland

Case No. 533

In the matter of the valuation of the properties and the investigation of the capitalization and affairs of the United Railways and Electric Company of Baltimore, on the Motion of the Commission, under authority conferred by Section 30 of the Public Service Commission Law.

Appearances:

Thomas J. Tingley, People's Counsel.

Edwin G. Baetjer and Joseph C. France, for the United Railways and Electric Company of Baltimore.

West, Chairman. Filed February 1st, 1928.

This case results from the decision of the Court of Appeals in remanding for further proceedings the action of this Commission in finding a value of the easements of The United Railways and Electric Company of Baltimore, hereinafter referred to as the "Company."

By its Order No. 8240, entered on May 26th, 1924, the Commission directed that the proceedings to establish the value of the property of the Company, which had

been instituted by Order No. 1024, on December 30th, 1912, but which had been allowed to lie dormant, be prosecuted to a conclusion. This investigation was completed and an opinion and order filed March 9th, 1926, finding the fair value of the Company's property as of December 31st, 1923, to be $77,000,000, which sum included $7,000,000 as the value of the Company's easements. For this element of its property the Company claimed a value of $18,184,954. The then People's Counsel, Clarence W. Miles, offered no testimony as to the value of the Company's easements. He contended that no value whatever ought to be allowed for them. The majority of the Commission, however, acting on the advice of Honorable Thomas H. Robinson, Attorney General, then legal adviser to the Commission, to the effect that he did not see how the Commission could avoid allowing a value for easements, and in view of the decisions of the Court of Appeals that the easements were actually an interest in land, felt compelled to allow a value for the Company's interest in the land occupied by its tracks. Commissioner Harper dissented as to the finding on easements, filing an opinion in which he held that no value whatever should be allowed for easements in the rate base.

The Company submitted three methods of finding the value of these easements which are explained in the Commission's opinion in the valuation case. The Commission declined to accept any of them believing that none was proper, and that the value claimed as a result of the application of any one of them was excessive. It was therefore compelled to find a plan which it felt would alike be fair to the public and the Company.

It found that certain easements in Baltimore City were assessed for taxation purposes. These were in the new and old annexes, and they were assessed for taxation purposes because they were not subject to the park tax of 9 per cent. on the gross receipts of the Company which the City imposes. In the new annex the figure was $12,500 per mile. In the old annex it was $17,692 a mile. The Commission felt that these tax assessment figures represented the lowest value these easements possessed as an interest in land, without any consideration what-

ever of earning power. The figure per mile for the old annex was about 40 per cent. higher than that for the new annex. The Commission therefore applied an increase of approximately 40 per cent. to the assessed value of the old annex easements, reaching a figure of $25,000 a mile which it fixed as the fair value of the easements within the boundaries of the City as they existed prior to the annexation of 1888.

People's Counsel, adhering to his position that no allowance whatever ought to be made for easement value, appealed to the courts. He raised no particular objection to the *amount* allowed nor to the *method* by which the amount was reached, contending that the *principle of allowing any amount whatever* was wrong. The case went first to the Circuit Court of Baltimore City which sustained the Commission. In the case before the Court it was argued that in finding a value for easements, the Commission was giving a value to an element of property the value of which was dependent upon its earning power.

Judge Frank, in discussing this point, said in effect that to allow a value created even in part by the earning capacity of the thing valued would be manifestly improper, for

> "The objection to valuing an easement in a rate base in terms of earnings is self-evident. The greater the value of the easement, the larger the fair return that must be allowed upon such value."

He also said, however, that:

> "The valuation of $7,000,000 made by the Commission which is now the subject of attack was reached without reference to the earning capacity of the easements so valued."

Mr. Miles appealed to the Court of Appeals, which, in an opinion in the case of Miles v. Public Service Commission of Maryland, et al. (151 Md. 337) sustained the *principle* of allowing a value for easements but held that in using assessment values for fixing the value of the Company's easements the Commission actually had used values which contained the element of earning power. The Court cited in support of this position the fact that

the case of the Consolidated Gas Company v. Baltimore City (101 Md. 541) definitely settles the fact that earning power is considered in establishing assessment values of easements.

It therefore remanded the case "without affirmance or reversal of the decree, for further proceedings in accordance with the opinion of this Court."

By agreement of counsel, the Court below sent the case back to the Commission for rehearing.

When it fixed the value of the Company's easements at $7,000,000, the Commission, of course, was fully aware of the impropriety of including even the smallest part of an element of earning power in the value of an easement, or of any other piece of utility property, for rate making purposes. It did not think it had done so, and if it did do so, this was by inadvertence. It was also, of course, familiar with the Consolidated Gas Company case (101 Md. 541) and with the fact that the Court of Appeals in that case had decided that the element of earning power should be taken into consideration in fixing the value of that Company's property for taxation purposes. It was aware also of the fact that a great deal of difficulty was experienced by the Appeals Tax Court of Baltimore City in fixing the assessed value of the Railway Company's easements; that the Railway's case had gone to the Court of Appeals; that the Court of Appeals had held that the park tax of 9 per cent. of the Company's gross receipts was in part a tax on the easements subject to the park tax, and of the further fact that the value established for taxation purposes of such easements as are not subject to the park tax was the result of a compromise. The Commission was not aware that in that compromise figure the element of earning power was included.

Also, in fixing a value for county easements, abutting land values were used as a base, and that figure, the Commission feels, is not involved in the Court of Appeals' decision. For the easements in the new annex, the Commission had before it uncontradicted testimony of real estate experts, which gave a higher value of new annex easements based on adjacent land values than the

value fixed for taxation purposes. Believing it would be justified in accepting the lower figure, it did so.

However, the Court having decided that its method in using tax assessment figures was improper, the Commission has proceeded by another method to establish a value for the Company's easements in the new annex as well as in the old annex and the old city, which it feels will meet with the Court's requirements. This method was developed at the rehearing which was held by the Commission and the whole case fully argued by counsel and briefs submitted.

Before discussing the method followed at the rehearing, however, the Commisson is compelled, in candor, to admit an error, other than that indicated by the Court, which it made in fixing the value of $7,000,000 for the Company's easements. This was pointed out by Thomas J. Tingley, People's Counsel, in the re-hearing of the easement case. Its correction would result in a reduction in the value found by the Commission even using the tax assessment base.

In discussing the Company's methods of arriving at the values it claimed for its easements in the original valuation case, the Commission, having in mind easements generally, but particularly those in the old city and old annex, said:

> "* * * the Company has only *an interest* in that part of the public highways occupied by its tracks, and not an outright ownership, and it can only use that part of the highways occupied by its tracks, in common with other vehicles operating over the highways."

Nevertheless, in arriving at its value for the easements in the public highways, it took the tax assessment figures on those parts of the Company's rights of way that were not covered by the park tax, these figures being the only ones available. These particular sections were private rights of way in which the public has no interest. They were acquired by purchase, by condemnation, or by gift or exclusive grant or by all these methods. The public has no rights in them, except perhaps to cross them. The

Commission, however, used the figures at which these *private* rights of way are assessed, as the basis for valuing *all* the rights of way and easements of the Company, those in which the Company has only an interest as well as those which it owns outright, without making a reduction in the value of those easements in which the public has at least a right equal to that of the Company.

In pointing this out in his brief, Mr. Tingley says:

> "* * * in the method of valuation thus employed, (by the Commission) it treated them, by inadvertence, as if they were exclusive rights of way acquired for value from private owners."

That is true.

In developing a plan for arriving at the value of the Company's easements for rate making purposes, which will meet the objections of the Court of Appeals to the former plan, People's Counsel and counsel for the Company have endeavored to determine what is the relative share or interest of the Company on the one hand, and the public on the other, in the land owned and used by them jointly. This plan has the approval of the Commission. The fact of the joint use of public easements was recognized and mentioned by the Commission in its earlier opinion. The working out of the plan, however, was beset by many difficulties and resulted in wide differences of opinion not only as to the application of the plan itself, but to the relative interests of the Company and the public in the city highways.

An effort was first made to determine the value of the property abutting upon the tracks of the Company; reducing all this property to lots of a depth of 150 feet; and applying this value of abutting property to the strip occupied by the railways in the bed of the street, in order to obtain the fee simple value of the easement strip. This done, the problem was then to determine the relative interests of the public and the Company in the strip. The Company claimed 50 per cent. and 75 per cent. as its interest, while the People's Counsel allowed 10 per cent. The Company claimed an easement width for single track of 10 feet over the entire system, while

People's Counsel allowed 9.1 feet in the old city and old annex and 12 feet in the new annex and the counties.

The only testimony as to the value of abutting property was that furnished by the Company. It was based on the assessment of 1914, and was originally made for the valuation proceedings under Order No. 1024, entered December 30, 1912. It covered the old city and the old annex and amounted to $134,751,854. This amount was accepted by People's Counsel, although he contended it was too close to the total land assessments in the old city and old annex to be correct. This phase of the situation was explained by counsel for the Company who said the values taken for land abutting on easements included street crossings, schools, churches, public squares and parks and any other exempt property which did not appear on the tax rolls. It did develop, however, that in many instances the same property is valued twice, as in the case where car tracks cross. However, it was the only figure submitted.

It was also agreed between counsel that in order to get 1924 values for property valued in 1914, it would be necessary to add 55 per cent. to 1914 assessments. This gives a value for the property abutting on the easements in the old city and old annex of $208,865,374.

The problem of finding the relative use by the public and by the Company of the easement strip was a complicated one, and almost entirely theoretical. There is no exact way of determining this. Also, the Company claims that "the right to use" is substantially of as great value as the actual use, which People's Counsel denies. The Commission feels that "the right to use" is of some value in addition to the actual use, but what that value is, is a matter of judgment entirely, as is the actual use. There is no accurate measure for determining either. Certainly it is not as great as "the right to use" which the owner of abutting property has, for he may use his property for any or many of perhaps a hundred lawful purposes while the Company may use its easements and private rights of way for the single purpose of operating cars thereon. Therefore, if objection be made that the Commission has in any way taken into

consideration "the use to which the property may be put," it has taken that single use as a measure for limiting, rather than increasing, the value of easements. However, the Commission has endeavored to value the easement strip simply as real estate.

There is no material difference between the People's Counsel and the Company as to the mileage of the easement strip. The total number of miles of easements as found by People's Counsel and accepted by the Company, is 366,653, divided as follows:

Old City	172.788 miles
Old Annex	66.678 miles
New Annex	88.649 miles
County	38.538 miles
Total	366.653 miles

Of these classifications, the valuation for the county stands as the Commission found it, undisturbed by the decision of the Court of Appeals, for the easement is exclusive, and the value found for it was not based upon tax assessment figures, but upon the appraised value of abutting real estate. The value of these 38,538 miles was found by the Commission to be $368,662. The correct amount should have been $368,038.

The value found by the Commission for the remaining 328.115 miles, consisting of the easements in the new and old annexes and in the old city, were based on tax assessment figures, and, under the decision of the Court, a value for them must be found on a different basis, notwithstanding the contention of the Company's Counsel that the value found for easements or rights of way in the new annex was lower than was shown by the uncontradicted testimony of the Company's real estate experts, who based their values for these easements on adjacent real estate values. As the Commission value *was* based on tax assessments, even though the Commission may have found a lower value than it otherwise might have found had it used adjacent land values, it must value them by another method.

The Company claims the value of its private rights of way and its public easements, on the basis of use, and

right to use, to be $10,321,290 on a 50 per cent. use factor for public easements or $14,613,568 on a 75 per cent. use factor. To these figures it adds $1,673,000 for pole and wire easements, making these values $11,994,290 and $16,286,568, respectively. The values are made up as follows:

	Common Easements 50 per cent. factor	Common Easements 75 per cent. factor
County—		
38.5 miles—value as found by Commission	$368,662	$368,662
New Annex—		
88.6 miles—former value found by Commission	1,131,512	1,131,512
Old Annex—		
12.2 miles—exclusive	236,558	236,558
54.5 miles—common	528,378	792,566
Old City—		
172.8 miles—common	8,056,180	12,084,270
Total	$10,321,290	$14,613,568
Pole and wire easement	1,673,000	1,673,000
	$11,994,290	$16,286,568

The Company contends that so far as the new annex easements are concerned, they consist of 70.6 miles of exclusive easements with an actual, 100 per cent. value, as of 1924, of $1,055,682, and 18 miles of common easements, with a value based on a 50 per cent. use factor of $134,577, or with a 75 per cent. use factor of $201,866, making the total value $1,192,259 or $1,257,548, according to whether the 50 per cent. or 75 per cent. use factor is employed for the common easements. As already stated, the Company contends that these values are based on abutting property values, ascertained by real estate brokers, and that the tax assessment figures were used to reduce the real estate value, rather than increase it, and the Commission's value, $1,131,512 for new annex easements, is not affected by the Court's de-

cision. Therefore, the Company adopts the Commission's figures of $1,131,512 as being the value of the new annex easements of all kinds.

For the old annex, the Company claims for its 12.2 miles of exclusive easements a value of $19,390 per mile or $236,558, and for its 54.5 miles of common easements $528,378 on a 50 per cent. use basis, or $792,566 on a 75 per cent. use basis, making the totals $764,936 or $1,029,124, according to the use basis adopted.

The value per mile of the exclusive easements in the old annex is found by the Company in this way: The Company's witness, Mr. Giffen testified (Record, p. 1797) that he had analysed the value of the property abutting on the Company's private rights of way in the old annex in 1914, and found that these rights of way amounted to 21.64 single track miles, and that the value of the property abutting thereon to the depth of 150 feet amounted to $3,247,926. The Company, assuming an easement width of 10 feet, divided the $3,247,926 by 15 to get the value of the easement strip. This amount was divided by the length of the strip, or 21.64 miles, and a value of $10,006 per mile on the 1914 basis was reached. The Company adopted $10,000 instead of $10,006 as the value per mile. As it had been agreed that the assessed value of 1924 was 55 per cent. greater than that of 1914, the figure $10,000 was increased by 55 per cent., which resulted in a figure of $15,500 per mile. Finally, on the contention that the 1924 assessed value of property represented only 80 per cent. of its actual value, the Company divided the amount by 80 per cent. and got a final value of $19,390 per mile, which it claimed to be the fee simple value per mile of all its easements in the old annex.

In order to get the value per mile of the easements in the old city, Mr. Giffen testified (Record, p. 1804) that he started with a study of the abutting property values on all the Company's easements in the old city and the old annex which he made in 1914, and which amounted to $134,751,854. The Company has 172,788 single track miles in the old city and 66,678 miles in the old annex, but instead of dividing by the sum of these, or 239,466,

the Company first took the figure which Mr. Giffen arrived at for easements in the old annex, $10,000 a mile, multiplied this by 15 to get the abutting property value per mile, and then by 66,678 and thereby got a value of $10,000,000, which it claimed represented the 1914 assessment value of property in the old annex which abuts upon the easements of the Company. This figure was subtracted from the $134,751,854, leaving $124,751,854 as the 1914 assessment value of the abutting property in the old city.

By dividing his $124,751,854 by 172.788 miles of single track in the old city, the Company obtained an abutting property value equal to $720,000 a mile and, dividing this by 15, it got a fee simple assessment value of the 10 foot easement strip equal to $48,125 per mile, on 1914 assessment figures. Increasing this by 55 per cent., it got a 1924 value of $74,594 a mile. Then, on the theory that the assessment value is only 80 per cent. of *actual* value, the Company divided this figure by 80 per cent. and got a figure of $93,242 a mile which it asserts is the *actual* fee simple value of the easements in the old city.

People's Counsel finds a value for the Company's easements of $2,113,000, and he arrives at his figure in this manner: For the 172.788 miles of easements in the old city he allows a fee simple value of $34,000 per mile which he gets by dividing the assessed value of the property in the old city and old annex (1914 basis) by the mileage of the tracks in the old city and old annex. Allowing an easement width of 10 feet this would give a 1914 fee simple value of $37,509 per mile. But he only allows a width of 9.1 feet, a reduction of 9 per cent., which gives him his value of $34,000. He allows a 10 per cent. use factor, which gives him $3,400 a mile as the value of the Company's rights in the streets of the old city, or a total of $585,000. He does not increase 1914 values to 1924 values by adding 55 per cent.

For the old annex and new annex, he separates the easements into three classes,—private rights of way, semi-private rights of way, and public easements. For private rights of way in the old annex he allows fee simple value, $12,000 a mile, which he gets by using the

basis of $10,000 a mile, adopted by the Company, but allowing an easement strip of 12 feet. He uses this $12,000 per single track mile throughout in determining old annex values. To the 54.527 miles of public easements in the old annex he applies the 10 per cent. use factor and gets a total of $65,000, or approximately $1,200 a mile.

What the Company calls "exclusive easements" he calls "semi-private rights of way." That they are not actually exclusive, he contends, is shown by the fact that they are crossed at intervals by public highways. For these "semi-public" easements he allows the fee simple (1914) value, $12,000, less the space taken up by crossings, for which space he allows a 10 per cent. use factor, or 1-10 of the fee simple value, and gets for the 11.443 miles a total value of $130,000.

For the new annex he allows 1924 real estate values of $15,000 per single track mile of easement, 12 feet wide. This gives him a total of $43,500 for the 2.896 miles of private rights of way. For the public easements, taking the 10 per cent. use factor, he gets a total of $27,000 for the 17.996 miles; and for the "semi-private rights of way," consisting of 67.757 miles, he gets a total of $960,000 by using the same method described in discussing "semi-private rights of way" in the old annex.

For the 38.538 miles of county easements, all of which he calls "semi-private" because they are crossed by public highways, he gets a total of $294,000, or $7,900 per mile. The Commission had in the earlier case allowed a total for these easements of $9,550 per mile, or $368,662. This valuation, accepted by the Commission, was made by brokers and experts on land values, and was based on adjacent land values. People's Counsel took this figure for the 38,538 miles, added to it the 40 miles of private rights of way in the county, covered by Commission's Account 502, for which the Commission had allowed $248,573, and which was not involved in the Court of Appeals' decision. He divided the total value by total miles ($617,235 by 78.5) and got the average value of county easements and Account 502 at $7,900 per mile. This figure multiplied by 38.5 miles gave $304,150, the difference between that figure and the $294,000 allowed

by People's Counsel being represented by the space taken out by public highway crossings. In the county he allows for five crossings to the mile, each 40 feet wide, while for the old and new annexes he allows eight of the same width per mile.

People's Counsel's Exhibit No. 3 shows these values, found by him, as follows:

Old City	
Public Easements—172.788 miles, 10% use factor, @ $34,000 per single track mile	$585,000
Old Annex	
Private Rights of Way—.708 miles @ $12.00 per single track mile	8,500
Semi Private Rights of Way—	
11.443 miles x $\left[1-9/10\left(\frac{8x40}{5280}\right)\right]$ @ $12,000 per single track mile	130,000
Public Easements—54,527 miles, 10% use factor, @ $12,000 per single track mile	65,000
New Annex	
Private Rights of Way—2.896 miles @ $15,000 per single track mile	43,500
Semi Private Rights of Way—	
67.757 miles x $\left[1-9/10\left(\frac{8x40}{5280}\right)\right]$ @ $15,000 per single track mile	960,000
Public Easements—17.996 miles, 10% use factor, @ $15,000 per single track mile	27,000
Counties	
Semi Public—38.538 miles x $\left[1-9/10\left(\frac{5x40}{5280}\right)\right]$ @ $7,900 per single track mile	294,000
	$2,113,000

It will be noted that People's Counsel makes no allowance for pole and feed wire easements for which the Company claims $1,673,000. This was explained by the witness, Mr. Gildea, who said that the easement space allowed between tracks on streets where double tracks exist, was sufficient to compensate for the space occupied by poles and wires along sidewalks.

This Commission cannot accept the values found or the method of arriving at those values, of either Company's counsel or the People's Counsel. It accepts the figure of $134,751,854 as representing the value of the property abutting upon the Company's easements in the old city and old annex in 1914. This figure, however, certainly contains some duplications of values, and it is the Commission's belief that these duplications occur at least in every instance where tracks on one street cross tracks on another. What these duplications amount to in dollars it is impossible to tell from the testimony or the data at hand. It accepts the figure solely because it has no other of equal or greater authority. It also accepts the theory that in order to bring the 1914 figure up to 1924, the date of valuation, it is necessary to add 55 per cent to the 1914 figures.

It is not willing, however, to concede that the 1924 value, arrived at by increasing the 1914 assessment figures by 55 per cent, represents only 80 per cent of 1924 actual value, and that it ought to be further increased in order to show actual values. The Commission understands that it is the policy of the city authorities to assess property at 100 per cent of its value and believes they do so. Even if they did not, there would be a wide enough factor of tolerance in the duplications of value which occur where one car track crosses another at street intersections to make up for any decrease from actual value in assessment figures.

Nor does the Commission feel that any separate allowance ought to be made for pole and wire easements. It made none in its previous valuation, feeling that the allowances made in the valuation figures of reproducible property under accounts 519 and 521 (Poles and Fixtures and Distribution System) of $1,195,363 and $3,549,645, respectively, were sufficiently large to include any

easement value that might exist. The Company justifies its claim for a value of $1,673,000 for its pole and wire easements in the old annex and old city, 239 miles at $7,000 a mile, "wholly on the valuation of the Gas and Electric Company's pole lines at $7,000 per mile." (Company's Brief, page 32). This amount was never allowed by this Commission. It is a compromise figure arrived at by the Appeals Tax Court and the Gas Company for taxation purposes, and a figure reached by such method comes too close to the prohibition laid down in the Court of Appeals' decision for this Commission to allow it. Furthermore, the Commission feels that in using a 10-foot easement strip per single track, it has made sufficient allowance for poles and wires as well as the track itself.

On the other hand, the Commission does not agree with some of the methods used by People's Counsel in valuing easements, or the results arrived at by those methods. It believes that 10 feet, the figure used by the Company, more properly represents the width of the easement strip throughout the system than does the figures of 9.1 feet for the old city and old annex and 12 feet for the new annex and counties, used by People's Counsel. Nor does it approve his method for arriving at the value of the easements in the old city and in the counties, which the Commission regards as mathematically unsound. Deducting highway crossings from private rights of way makes too small a difference in the total value to have any real effect in the valuation, but any allowance necessary to be made for this amount can be made in another way by the Commission without going into a series of intricate calculations.

In spite of the practical impossibility of developing an accurate figure by which the ratio of use by the Company and the public in the easement strip may be determined, the Commission adopts the use factor in establishing the value of the Company's interest in the land which it occupies with its tracks. The Commission fully recognizes that it is indefinite, and that there are wide differences of opinion as to the actual use made of the strip by the public and the company; also as to how far the Company's "right to use" can extend against actual use by the public. In determining the extent of the Company's interest, the Commission must rely largely upon

its own judgment, based on the *facts* that have been developed at the rehearing. The theories have not been particularly helpful.

It believes that an apportionment of a 25 per cent interest in the easement strip to the Company and a 75 per cent interest to the public is fair to both, and it therefore adopts 25 per cent of the fee simple value of the strip as the value of the Company's interest in the land occupied by its tracks where the rights of the Company are not exclusive, this fee simple value being determined by adjacent land values, assessment of 1914, brought up to January 1, 1924, values by increasing them 55 per cent.

The approximate values of all the easements of the Company, exclusive and non-exclusive, arrived at by the Commission as aforesaid, are as follows:

EASEMENTS.

Old City, 172.788 miles @ $48,125 per mile			$8,315,422
Old Annex, 66.678 miles @ $10,000 per mile		$666,780	
Less private rights of way	.708 miles		
Less semi-private rights of way	11.445 "		
	12.151 " @ $10,000 per mile	121,510	545,270
New Annex, 88.649 miles @ $9,647 per mile		$855,197	
Less private rights of way	2.896 miles		
Less semi-private rights of way	67.757 "		
	70.653 " @ $9,647 per mile	681,589	173,608
Total, 1914 values			$9,034,300

Increasing this figure 55%, the total value of the land included in the Easements, based upon 1924 value, is $14,003,165

Applying the use factor of 25% to the value of the land, the approximate value of the Easements is $3,500,791

Private and Semi Private Rights of Way in the Old Annex and New Annex (or Exclusive Easements):

Old Annex, 12.151 miles @ $10,000 per mile	$121,510	
New Annex, 70.653 " @ 9,647 " "	681,589	
Total, 1914 values	$803,099	

Increasing this figure 55%, the total value of the private and semi private rights of way in the old annex and new annex, based upon 1924 value, is 1,244,803

Semi Private Rights of Way (or Exclusive Easements) in the Counties:

38.538 miles @ $9,550 per mile (1924 value) 368,038

Total approximate value of Easements and private and semi private rights of way $5,113,632

After a careful consideration of all the factors which in its judgment go to determine or affect the value of the interest of The United Railways and Electric Company of Baltimore, in the land occupied by the tracks of its street railway system, the Commission finds the value of such interest to be $5,000,000. As hereinbefore stated, the Commission has previously found that the value of the property of the Company, exclusive of easements, was $70,000,000 as of December 31st, 1923. The Commission, therefore, finds that the total value of all property of the Company, including easements, to be $75,000,000 as of December 31st, 1923, and an order will be passed accordingly modifying its Order No. 10072 entered herein on March 9th, 1926.

Commissioner Harper concurs. Commissioner Purcell was not a member of the Commission at the time the case was heard and took no part in the deliberations or the decision of the Commission in this matter.

ORDER NO. 12630.

Before the Public Service Commission of Maryland.

In the Matter of the Valuation of the Properties and the Investigation of the Capitalization and Affairs of the United Railways and Electric Company of Baltimore, on the Motion of the Commission, Under Authority Conferred by Section 30 of the Public Service Commission Law.

CASE No. 533

In accordance with the opinion of the Commission filed herein on the date hereof, which said opinion is hereby referred to and made a part hereof.

IT IS, this 1st day of February, in the year Nineteen Hundred and Twenty-eight, by the Public Service Commission of Maryland,

ORDERED: That paragraph (1) of Order No. 10072 entered herein by the Commission on March 9th, 1926, be and it is hereby modified and amended to read as follows:

(1) That the fair value for rate-making purposes of the property of The United Railways and Electric Company of Baltimore on December 31st, 1923, was Seventy-five Million Dollars ($75,000,000), and such valuation shall be and become final unless protest against the same shall be filed with the Commission within ten (10) days from the date of this order, as provided by Section 30 of the Public Service Commission Law.

AND IT IS FURTHER ORDERED: That except as hereinbefore modified, Order No. 10072 entered herein by the Commission on March 9th, 1926, shall be and remain in full force and effect.

AND IT IS FURTHER ORDERED: That a copy of this order and a copy of the opinion hereinbefore referred to and filed herewith be forthwith served upon the said The United Railways and Electric Company of Baltimore, and that the said Company, within ten (10) days from the date of the service of such copy, advise this Commission in writing whether or not it will accept and abide by the same.

J. FRANK HARPER,

HAROLD E. WEST,

Commisioners.

Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1928 29

No. 792 55

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, APPELLANT,

vs.

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND

FILED MARCH 27, 1929

No. 826 64

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND, APPELLANTS,

vs.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

FILED APRIL 10, 1929

APPEALS FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND

(34,101, 34,135)

(33,773, 33,774)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 464

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, APPELLANT,

vs.

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND.

No. 465

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND, APPELLANTS,

vs.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE.

APPEALS FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND

VOL. II

INDEX

	Page
Statement of evidence in case No. 2648	359
Testimony of C. D. Emmons	361
H. Carl Wolf	507

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPT. 24, 1928

		Page
Testimony of	Allen G. Hoyt	531
	John J. Nelligan	544
	H. Carl Wolf	547
	Charles Nodder	554
	C. D. Emmons	578
	Carville D. Benson	620
	C. D. Emmons	633

VOLUME II

TRANSCRIPT OF RECORD

FROM THE

CIRCUIT COURT NO. 2 OF BALTIMORE CITY

IN THE CASE OF

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

VS.

HAROLD E. WEST ET AL.,

TO THE

COURT OF APPEALS OF MARYLAND.

THOMAS J. TINGLEY,
RAYMOND S. WILLIAMS,
For Appellants.

HENRY H. WATERS,
VENABLE, BAETJER & HOWARD,
HAMAN, COOK, CHESNUT & MARKELL,
JOS. C. FRANCE,
For Appellee.

(11)

THE FOLLOWING PORTIONS OF THE STENOGRAPHIC TRANSCRIPT OF PROCEEDINGS BEFORE THE PUBLIC SERVICE COMMISSION.

FIRST DAY.

(The Chairman) This is Case No. 2648, application of the United Railways and Electric Company of Baltimore for the establishment of a permanent rate of fare of ten cents and for the establishment of a temporary emergency rate of fare pending the establishment of such permanent rate of fare.

The application of the Company is sort of a double-barrelled one and it sets forth, among other things:

* * * "Your Petitioner, therefore, now files this petition asking your Honorable Commission to establish a flat fare of ten cents cash for the conveyance of each passenger over twelve years of age, with half fares at five cents each for children between the ages of four and twelve years, school tickets at five cent each, and commutation tickets at special rates. Your Petitioner also asks your Honorable Commission to put into effect at once substantially increased fares in order that pending such establishment of such permanent rates of fare, your Petitioner may be able to provide adequate service and meet its obligations. * * *

That calls for two hearings, one on the needs for a temporary or emergency rate of fare and the other for a flat fare of ten cents. The Commission has decided that at this hearing only the matter of the emergency will be taken up. It will be the company's place to show that such an emergency exists as would warrant the Commission in increasing the fare without such an investigation as it would make in the establishment of a permanent rate of fare. It will be the duty of the People's Counsel and those opposing the Company's position to show that such an emergency does not exist.

We don't think that that ought to take a great deal of time. When that matter is before the Commission the Commission will take the matter under advisement and decide whether a situation exists in the affairs of the Company of sufficient gravity to warrant it making an increase in fare pending a determination of the main inquiry in the case. When we decide the matter the Commission will at that time set a date for a hearing on the main proposition.

We think that is the simplest and best way to handle the situation. We know of course from the papers and from the Petition and letters that have been pouring into the Commission that the application for an increased fare is very strongly opposed. However, we do not think that this will be the time to get into the merits or demerits of a ten cent fare. The question now before the Commission is purely that of the emergency that now faces the Company.

SECOND DAY.

(Mr. Howard) If the Commision please, we wish to first offer in evidence the record in the previous Rate Cases of the United and the Valuation Case. They are, I believe, cases 1568, 1583, 1682 and the Valuation Case No. 533.

Thereupon:

C. D. EMMONS,

a witness of lawful age, produced on behalf of the Applicant, having first been duly sworn, according to law, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Howard:

Q. Mr. Emmons, you are the President of the United Railways and Electric Company of Baltimore? A. Yes, sir.

Q. Since when have you been its President? A. August, 1919. August 1, 1919.

Q. And will you tell the Commission briefly, what your street railways experience has been previous to that? A. I began in the street railway business I believe in college in 1892. I was nine years with the Pennsylvania R. R. and since that time, 1901, I have been in the electric railway business, starting in Lafayette, Ind.

(Mr. Tingley) If I might interrupt, Mr. Emmons' qualifications are of course, admitted.

(Mr. Howard) I think as he is the principal witness in the case, a brief statement of what his qualifications are would help.

(The Witness) (Continuing) As General Superintendent of the Lafayette Street Railways, going from there to Fort Wayne, Ind., as General Manager of the Fort Wayne and Wabash Valley Traction Company, go-

ing from there to South Bend, as Vice President and General Manager of the Chicago South Bend and Northern Indiana and also the Southern Michigan Railway. From there to Framingham as Vice President and General Manager of the Boston President and General Manager of the Boston and Worcester Street Railways, from there to Boston as General Manager of the Boston Elevated, and from Boston here as Preident of the United Railways.

I haven't given the period there, if you wish, tho, I can give them.

Q. Now, Mr. Emmons, I am going to get you to file and explain certain exhibits, which have already been filed with the Secretary and which other parties interested have been furnished copies, but I am not going to ask you for them in the same order that they were tentatively numbered when they were given to the Secretary. I want to take them up under the headings that they relate to, and have you first of all an exhibit which was tentatively numbered 3, and an exhibit No. 3A, bringing that same exhibit to a later date.

(Mr. Tingley) Could you give us the titles of those exhibits?

(Mr. Howard) Yes, that is "Decrease in Passenger Revenue."

NOTE: Blue print above referred to is here filed in evidence and marked Applicant's Ex. No. 1.

(Mr. Howard) With the Commission's permission, in each case where we have brought these exhibits up to date, I see no reason why I should offer the exhibit that is one month short and we will offer the latest one in each case.

Q. (By Mr. Howard) Now Mr. Emmons, referring to that Ex. No. 1 will you briefly explain to the Commission what it is and what it shows? A. Exhibit No. 1 shows the decrease in passenger revenue for the first eight months of 1927, compared with the first eight months of 1926, and also at the bottom a comparison of the past four months, May, June, July and August, August being approximately correct, very closely to being correct.

On January it shows a gross earnings in 1927 of $1,387,103.00 against 1926 January of $1,386,691.00 or an increase of $412.00.

Q. Approximately the same? A. Approximately the same. .03 of 1% increase. That is the only increase shown in the tabulation.

In February we began making decreases, and in February without reading the figures of 1927 and '26, we show a decrease of $23,334.00 or 1.83%.

In March we show a decrease of $39,959.00 or 2.77%. In April we show a decrease of $22,827.00 or 1.63%. In May a decrease of $60,590.00 or 4.2%. In June a decrease of $47,554.00 or 3.49%. In July 2 decrease of $59,669.00 or 4.55%. A total for the first seven months of $253,521.00 less than the first seven months of 1926, or 2.63%.

Q. Average? A. Average for the first seven months. August is separate because it is to some extent approximately.

Q. You have your August figures in the main? A. Yes, it's very close.

Q. Is the approximation necessarily a close one, or is it a guess? A. It's a very close one. We show a decrease in the month of August of $49,808.00 or 3.13% or an average for the first eight months, including that of $293,329.00 or 2.69%.

In taking the last four months in order to show the trend of the present day May, June, July and August it shows a total decrease of those four months of $207,621.00 or 3.85%.

July and August taken together show a decrease of 3.85%.

Q. Just in that connection the remark was made, I think yesterday, that July was not a fair month for comparison because July last year had five Sundays in it. How about August? A. August had four Saturdays and four Sundays this year. July had five Saturdays and five Sundays last year. The months do sometimes show one additional Saturday or one additional Sunday, but in

putting the two months together it then makes nine Saturdays and nine Sundays in the two months. That's the reason we thought by putting two months together it wiped out the question of five Saturdays or five Sundays in one month.

Q. In the first part of your answer you said July showed five Sundays last year? A. No, I meant July showed five Sundays this year.

Q. So if you take July and August together, the fact that one month had one more Sunday in it is exactly offset, isn't it? A. Offset, yes.

Q. Now, that is a statement in terms of passenger revenue, isn't it? A. Yes, sir.

Q. Will you refer to a statement that was tentatively numbered No. 8, and the corrected one brought up to date is No. 8A which I believe gives figures in terms of revenue passengers?

(Commissioner Harper) Mr. Howard, do you propose to offer an exhibit making the same comparison applied to the corresponding months of 1925?

(Mr. Howard) We have not figured that out. Although it could very readily be done.

(The Witness) Senator I have and I expected later to refer to them the monthly comparisons clear back to 1920.

NOTE: Statement above referred to is here filed in evidence and marked Applicant's Exhibit No. 2.

Q. Now, this exhibit which has been filed with the stenographer is entitled "Comparative Statement of Revenue Passengers," and then at the head of the columns compared with the next preceding year. Will you explain to the Commission what that table is and what it shows? A. The table shows that in the year 1920 we had 253,934,179 revenue passengers. In 1921 we dropped to 238,090,980 revenue passengers, a decrease in number of revenue passengers of 15,843,199, or 6.24%.

In 1922 we dropped further to 233,732,146 a further decrease of 4,358,834 or 1.83%.

In 1923 we increased a little bit to 238,658,380 or an increase of 4,926,234 or 2.11%.

In 1924 we fell back to 228,423,774 a decrease of 10,234,606 or 4.29%.

In 1925 we further fell to 224,235,527 or 4,188,247 less or 1.83%.

In 1926 we gained a little, 1,020,106 or .45%, showing a net decrease in that period, however, of 28,678,546 revenue passengers or 11.29%.

Beginning the first of the year the revenue passengers in January compared with revenue passengers of January the year previous showed 19,012,646 or an increase of 60,324 or .32%.

Since that time we have been gradually losing. In February we show 17,177,034 or a decrease of 281,759 or 1.61%.

In March 19,264,995 a decrease of 495,445 or 2.51%.

In April the revenue passengers were 18,925,630, a decrease of 267,664 or 1.39%.

In May the revenue passengers were 19,001,550, a decrease of 777,440 or 3.93%.

In June the revenue passengers were 17,969,391, a decrease of 602,024 or 3.24%.

In July the revenue passengers were 17,100,120, a decrease of 749,810 or 4.20%, making a total for the first seven months of revenue passengers 128,451,366, a total decrease of 3,113,818, or 2.37%.

August figures show approximately 16,805,394 a decrease of 499,951 or 2.89%, with a total for the eight months of 145,256,760 a total decrease 3,613,769 or 2.43%.

(Commissioner Harper) Mr. Emmons, why is the percentage of decreases of revenue passengers less than the percentage of decrease of passenger revenue?

(The Witness) Because the revenue passengers, as brought out this morning, has been decreasing largely in the higher rates of fare. I think that's very easily ex-

plained, because the automobile rider, which I think is our real cause of trouble, the one that are the owners of the automobile, the heads of the families were the ones that were paying the higher fares. The school children and half-fare children have not decreased. The commutation rides have increased materially, and that is largely due to the Sparrows Point activity. I think that is the explanation. You would have to have a relative decrease in all the different classifications to make those two percentages come the same.

Q. I was going to ask you to explain why the exhibit No. 1, which is a statement of passenger revenue, and exhibit No. 2 which is a statement of revenue passengers why they didn't precisely agree in their proportions or ratios? A. I think I have explained it.

Q. If I understand you, the first one is a statement of your revenue from passengers. The second is a per capita statement of passengers to date? A. Right.

Q. It would include passengers who paid an eight-cent cash fare, it would include passengers who use tokens, it would include school children and it would include commutation tickets? A. And half-fare also.

(Commissioner Harper) I notice that there is a decrease of over four million in 1925 compared to '24. Isn't that largely explained by the fact the zones were extended and that where a passenger at one time counted two passengers, he then only counted one?

(Mr. Howard) We have a special exhibit of all zone extensions.

(The Witness) But the answer is yes to the Senator. That is also true somewhat to the 1921 and 1922 figures, because there were some zone extensions in there, Senator.

Q. Now, when in this exhibit No. 2 do you speak of August as being approximate, I will ask you the same question I did with reference to the other exhibits. Is this based on facts that have already happened or is it an estimate as to the future? A. Those are facts that already happened, subject to some small adjustments made at the end of the month.

Q. So the approximation is a close one? A. Very close, yes.

Q. Would you now refer to two exhibits that were tentatively numbered I think 15 and 16? Now, the first of those is entitled "Preliminary Results August 1927 compared with August 1926." Is it not? A. Yes.

(Mr. Howard) And I now file that with the stenographer to be marked Exhibit No. 3.

NOTE: Statement above referred to is here filed in evidence and marked Applicant's Exhibit No. 3.

Q. That appears to be a day by day comparison, is that right? A. Yes, sir.

Q. Will you explain without repeating the figures in it, except where you may think it necessary to explain to the Commission what it is and what it shows? A. This is an order to show the trend of the day by day comparison, eliminating a Sunday-Monday comparison that started off the first of the month, which rather threw the relative trend comparison out.

Q. It's arranged by weeks then, isn't it? A. By weeks, yes. For instance August first this year was on Monday, with gross receipts of approximately $42,000.00. August 1st last year was Sunday with gross receipts of approximately $28,000.00, so there is a $14,000.00 apparent increase in the first day of the month, which does not show the trend, therefore this was gotten out showing a Monday-Monday comparison and following through to Wednesday-Wednesday including September 1st as the corresponding Wednesday.

It shows in this comparison a total of receipts, comparing those four weeks and three days, of $1,233,718.00 in 1927 as compared to $1,289,603.00 in 1926, or a decrease of $55,885.00 or 4.33% which we feel shows the trend of the present time much more closely than a month average or a two months average.

Q. Just in that connection, Mr. Emmons, was your August, 1926, for the time being, a good or a poor month? A. It was the poorest August we ever had, and the 1927 is by far much worse. It's the poorest August we have had since any rate increase has been granted.

Q. And this table then shows that comparing the corresponding days of the week this wear with the same period and same days in the calendar last year that you get on average less in receipts of 4.33% for the same period last year? A. Yes. Referring to the question of August, this August is going to show about $170,000.00 less than August, 1920. It's the poorest August we have ever had.

(Commissioner Harper) I assume the letter "C" means clear and "CL" means cloudy.

(The Witness) Right, and "R" is rain, "PC" is partly cloudy. We have the weather conditions on there because weather conditions will sometimes show immediately why there was a gain this year. For instance, the largest increase was on Wednesday, the 17th, which was a terrifically bad day last year, with a temperature of 74 to 68 as against clear weather this year of 87-66, so that would explain the reason that day went off the trend.

(Mr. Tingley) It was cloudy this year, wasn't it?

(The Witness) Cloudy is right. Both morning and afternoon.

Q. Just in this connection while you are on this table, I might ask you about one phenomonon that it shows. Here are your Sundays now? A. Sundays as well as holidays are running materially back of Sundays and holidays of years ago.

Q. That is shown by this table isn't it? A. By comparison it shows here, but the fact is that it shows all the way through, and if you go back further the difference is very much more accentuated.

Q. Years ago how was Sunday in the street railway business? A. Years ago Saturdays, Sundays and holidays used to be big days before the days of the autobile.

Q. Now, would you file with the stenographer as Exhibit No. 4 the other one of these exhibits I asked you to get out, which was formerly No. 16?

NOTE: Statement above referred to is here filed in evidence and marked Applicant's Exhibit No. 4.

Q. Now, that appears to be a summation of the two months of July and August of this year and last year compared with each other, isn't it? A. Yes, sir.

Q. Explain what that shows? A. That was for the same reason we did on another sheet, to average the question of Saturday and Sundays so we would get in the two months an equal number of Saturdays and an equal number of Sundays.

Q. When you add July and August together that's true, isn't it? A. Yes. It puts nine Saturdays and nine Sundays in there. It shows that for the two months in 1927 the passenger revenue receipts were $2,489,445.00 and in 1926 $2,589,385.00, a decrease in the two months $99,940.00 or 3.86%.

Q. Explain what the two notes at the foot of the table means. The first says, "Adjusted Figures?" A. Adjusted figures in July mean that after they go through the report there are various adjustments necessary for cash fares and fare tokens and school tickets after the check is made all the way through. The adjustment doesn't amount to very much, but we wanted to show that this was a figure that does not agree with the preliminary figure put out.

Q. And under August the note says, "Preliminary Figures?" A. That's the same reason, because that preliminary figure had to be adjusted to a small extent.

Q. But that adjustment is a very small one? A. Yes, and wouldn't change the result very materially.

Q. Now Senator Harper asked a moment ago if you could indicate some comparison with another previous year than 1926. There was an exhibit tentatively numbered No. 17 that shows a comparison of that nature, I believe. Will you file that with the stenographer so it can be marked Exhibit No. 5?

NOTE: Statement above referred to is here filed in evidence and marked applicant's Exhibit No. 5.

Q. Now that is an exhibit in the form of a chart or

draft that has apparently four different lines or curves on it, hasn't it? A. Yes, sir.

Q. Explain first what the red line with white dots is? A. The red line with red dots are the net incomes for the various months of the present year with August estimated.

Q. As to August being estimated, the same thing that I have said is true; that is not an estimate of the future? A. That is not an estimate of the future as to earnings. It is as close as we can get without our books being closed for the month as to net.

Q. The red line then shows the trend during that period of your net income? A. Yes, sir.

Q. Is shows rather the trend of your net income for 1927 through each of the months that have so far run, doesn't it? A. Yes, sir.

Q. Now the other lines are put there for purposes of comparisons, aren't they? A. Yes.

Q. And what is the yellow line? A. The yellow line is the average of all the high nets and the low nets, not the average of the high and low, its the average of all the nets of the year shown on this chart. The top line is all of the highest nets of the various years 1920 to 26 taken out and plotted to show that upper curve. All of the lowest nets for the same years were taken out to show the lower curve.

Q. Then let me see if I have the idea correctly. As I understand the red line shows the fluctuation of your net income over the year 1927 so far as that year has already elapsed? A. Correct.

Q. And this yellow line shows the average rate at which your net income varied through the twelve months of the year averaging seven years past? A. 1920 to 26, yes, sir.

Q. And the other two fainter white lines are the highest for those seven years and the lowest for those seven years? A. That's correct, yes, sir.

Q. Let me get that plain, that curve that is marked low. Have you picked out the lowest of the seven years

in giving the curve for that or is the curve the lowest for each of those years? A. It's the lowest for each month for each of those years.

Q. So it's the lowest yet experienced in any of those seven years? A. Yes, sir.

Q. And the yellow one is the average trend? A. Yes.

(Commissioner Harper) One of those lines may represent months in different years.

(The Witness) Yes.

(Mr. Markell) They do. The high and low.

(Mr. Howard) The yellow is the average for the seven years. The high is the highest peak out and the low is lowest peak out and the red line is this year's experience.

Q. (By Mr. Howard) Now Mr. Emmons I want to file some of the exhibits which show your receipts and so on for some years past. Will you refer to an exhibit that was tentatively numbered 2, and that gave receipts, etc., for 1920 to 1926 inclusive. There are three sheets to this exhibit.

NOTE: Statement above referred to is here filed in evidence and marked Applicant's Exhibit No. 6.

Q. In the case of this exhibit Mr. Emmons, in bringing the exhibit that was filed with the Secretary of the Commission sometime ago up to date, you have adopted the method of adding a supplement to it, instead of restating the whole exhibit, haven't you? A. Yes, sir,

Q. So the complete exhibit now filed consists of three sheets, the first is marked Sheet A, and the second is Sheet B, and the third is a supplement to those first two sheets. Now will you explain without going over any figures, except those that you may think necessary for such explanation will you explain to the Commission what this Exhibit shows? A. This exhibit shows rather in concise form the results of all operations for the years 1920 to 26 inclusive, showing the operating income accounts for the various years, the various operating expense accounts and the gross income, ending with the gross income, and the gross income for the various years shown;

$4,264,077.07 for the year 1920; $3,944,961.05 for the year 1921; $4,109,203.73 for the year 1922; $4,199,089.77 for the year 1923; $4,303,230.98 for the year 1924; $4,332,-837.74 for the year 1925; $4,392,156.69 for the year 1926.

For these gross incomes have been added or deducted various adjustments in order to obtain as nearly as we can the gross income received that would be the correct amount to figure in case of figuring a fair return, the result being for $1920 $4,250,777.36; for 1921 $3,803,322.46; for 1922 $4,012,243.81; for 1923 $4,195,130.24; for 1924 $4,437,668.40; for 1925 $4,149,744.20, and for 1926 $4,307,-397.59.

Q. Now I will ask you at that point to skip for a moment to sheet No. 2 and explain what it is and what it shows. A. Sheet No. 2 shows the amount that should be used as the valuaton as of January 1, 1920 to 26, inclusive, based on $70,000,000.00 the valuation given except easements as of January 1, 1924, adding or subtracting for the various years as our road and equipment account increased or decreased.

Q. In other words, it does two things; it brings your valuation up to the middle of 1926 on the one hand, is that right? A.| Up to January 1, 1926.

Q. And then for purposes of comparison of this table it carries it back to 1920? A. January 1, 1920.

Q. And below is the proof and reconciliation of it? Now those are the figures that have been used in arriving at revenue to Sheet A, the results at the foot of the sheet? A. Yes, sir.

Q. Now will you turn to the supplemental sheet that has been added to these two sheets since they were first given to the Secretary of the Commission and tell what the occasion for that is? A. The occasion for that is the question whether or not these adjustments should be made in the year in which adjustments were made or the year to which they apply, the first sheet showing adjustments as being made in the year in which the adjustments were found out and made, and the latest sheet throwing them back in the years to which they apply. That is the reason on the first sheet there are not adjustments shown in 1920

and 21 in the addition column and only adjustment shown in the deduction column. The result is practically the same, Mr. Howard.

Q. Will you now produce an exhibit which was heretofore filed with the Secretary of the Commission tentatively numbered 4, but which I believe has now been brought up to date by the additional experience reported by the month of August that has elapsed.

NOTE: Statement above referred to is here filed in evidence and marked Applicant's Exhibit No. 7.

Q. Now this exhibit consists of two sheets numbered Sheet A and Sheet B, doesn't it? A. Yes, sir.

Q. Now this exhibit is to some extent an estimate of the future, isn't it? A. Yes, for the last five months.

Q. For the last four months, isn't it? But on those months August is estimated only in the sense you have already mentioned? A. As to expense only.

Q. Now will you explain to the Commission what basis this table is constructed on? A. This table is an effort to show what our net will be at the end of the year, and its constructed on the actual results for the first seven months of 1927, giving actually the passenger revenue and other revenue, the actual operating expense and depreciation reserve set up, but 5% of the revenue, the non-operating revenue with deductions and ending with the net income for the first seven months of $383,850.00.

The last five months are estimated on the basis of a 4% reduction in passenger revenue and a 2% reduction in expenses. That is in addition to absorbing the 2% wages given to the men. That then has added to it and an additional item of power cost of $120,000.00, which is in addition to the amount it has been setting up, because of the fact that until a few weeks ago we had not yet received from the Gas Company the figures that will be used possibly for the rest of the year. We had to come into the year using the last year's figures. So that requires $120,000.00 additional.

For Accident Reserve, because of the fact that we have been running off at the rate of about $10,000.00 a month,

or $70,000.00 for the first seven months in our Accident Reserve account. Putting those two items in it raises the cost of operating expenses to a total of $10,042,461.00, to which then is added a depreciation of 5% on the estimated passenger revenue.

Q. That's the basis your depreciation has been figured on, isn't it? A. For years past under instructions by the Commission. This depreciation item amounts to $809,-564.00 for the year, making total operating expenses and depreciation $10,852,025.00 the net operating revenue being $5,339,274.00, from which deductions of taxes are made, and giving an operating income of $3,763,000.00 plus non-operating income of $171,000.00, making a gross income of $3,934,000.00, deductions for interest charges and so on being made, leaving a net income of $489,000.00.

Q. Now that as I understand is of course figured on the basis of supposition that there is no change in your fare rates for the balance of the year? A. Yes.

Q. The next the last column of that table, what does that figure out? A. The last column is figuring out what would be the result if we had a ten cent adult fare, raising the half fare from four to five cents, retaining the five-cent school ticket with commutation tickets unchanged.

Q. Taking it when? A. Taking it as of September 15th. Also giving an additional possible 2% loss in the adult and half fare passengers due to the increases in these rates of fare, the result being a net income of $1,-486,000.00. We have used the same operating expenses of $10,042,461.00, and we have added to that $76,000.00 which carries out our promise to our men that if we were in a position to increase their wages we would do it. That gives a total operating expense of $10,118,500.00, with the result after making the deductions, giving a result of net income of $1,486,000.00 for the balance of the year.

Q. Those two foot notes at the bottom give the explanation that you have given verbally, don't they? A. Yes, sir.

Q. Now Sheet B, the second half of this exhibit, is that merely a detail of the process by which the figures on the first sheet are arrived at? A. Yes, that's an explanation of how they are arrived at?

Q. And there is nothing in that that you see that calls for explanation unless you are asked about it in Cross-Examination? A. That's all, yes sir. That upper left-hand corner shows the reason—Senator Harper asked the question whether passenger revenues and revenue passengers did not show the same amount of decrease; that our decrease is in the adult riders and I feel they are the ones, that because of that is due to the automobile.

Q. Now the exhibit which was heretofore tentatively numbered 5, and which will now be numbered 8, having been brought up to date, 1927, by using the additional months that have elapsed.

NOTE: Statement above referred to is here filed in evidence and marked Applicant's Exhibit No. 8.

Q. That apparently is a comparison of your net income for the three past three years and for the current year with an estimate that the Commission made in its opinion in the 1924 case, isn't it? A. It is.

Q. What does that show? Does it come up to the estimate or come below it? A. It has fallen below the estimate every year. The estimate of the Commission in 1924 was that we should have $1,182,142.00 as the net income. The net income for 1924 was $967,968.00, or $214,174.00 less than the Commission's estimate.

In 1925 the net income was $980,610.00, or $201,532.00 less than the Commission's estimate.

In 1926 the net income was $1,010,054.00, or $172,088.00 less than the Commission's estimate, and the estimated amount for 1927 is $489,000.00, or $693,142.00 less than the Commission's estimate, or making a total for these four years of $1,280,936.00 less than the Commission estimated in 1924.

Q. Of course, that 1927 figure is on the basis of the present fare, isn't it? A. Basis of the present fare, yes, sir.

Q. I am now asking you to file with the Commission as exhibit No. 9 the exhibit which was heretofore tentatively numbered No. 6.

NOTE: Statement above referred to is here filed in evidence and marked Applicant's Exhibit No. 9.

Q. Now this exhibit, Mr. Emmons, is an exhibit of comparison also, is it not? It compares your actual net income for the six past years with the two amounts of a million and a million five hundred thousand dollars that has mentioned several times already in this hearing as the possible amount. Tell the Commission briefly what it shows. A. Its the past seven years instead of six, Mr. Howard. It shows this that taking the total net income of the past seven years, we have fallen short of the minimum income of a million dollars which the Commission thought that we should have for the purpose of credit by $587,003.00.

Q. And you only made that amount in two years, didn't you? A. We only made that amount in two years, the first year 1920 and then $43,599.00 over, and in 1926 only $10,054.00 over. And the Commission further stated that it was well for the company and thought it would be well for the general public that we should have a credit established by a million and a half. From this figure of a million and a half we have fallen short to the extent of $4,087,003.00 in the past seven years.

Q. And never came near the figure in any one year, did you? A. Never came near the figure in any one year.

Q. Will you now file with the stenographer the exhibit heretofore tentatively numbered 7 and which now becomes Applicant's Exhibit No. 10?

NOTE: Statement above referred to is here filed in evidence and marked Applicant's Exhibit No. 10.

Q. Now this is a somewhat similar comparison of your gross income and fixed charges for the past period of seven years, isn't ? A. Yes, sir.

Q. And it takes two standards there, one is the gross income should be one and a third times fixed charges, and the other is that gross income should be one and a half times fixed charges. Have you ever measured up to either of those? A. We have not not.

Q. Now what does that show as total shortage for those

years? A. It shows on the basis of one and a third times the fixed charges a total shortage of $1,297,854.00, or on the basis of one and a half times fixed charges a total shortage of $5,153,281.00.

(Mr. Clark) You include your interest on income funds in fixed charges.

(The Witness) They always have been so included.

(Mr. Clark) In your reports to the Commission, but not in your reports to the public or to the bankers.

(The Witness) We always include them in our reports to the public and bankers.

(Mr. Clark) As part of your fixed charges.

(The Witness) As part of our fixed charges.

(Mr. Clark) Not the ones I see.

(The Witness) Your statement I think shows it. Gillet & Company's figure.

(Mr. Clark) No, you advertise to them that you are earning over one and half times fixed charges or about one and a half times fixed charges, and you do not calculate your interest on your income bonds as fixed charges. But go ahead.

(Mr. Howard) I think if you will show him the paper you refer to he can explain it.

(Mr. Clark) I will refer him to any prospectus he gets out as company prospectuses.

Q. Now Mr. Emmons, there has already been a great deal of reference made to the subject of automobiles and automobile competition, and you have prepared an exhibit which is on the wall there, which I think every one can see. I will ask the stenographer to give that the next number.

NOTE: Chart above referred to is here filed in evidence and marked Applicant's Exhibit No. 11.

Q. Mr. Emmons, that is a chart or graph that has a number of lines on it, put together for purposes of comparison, hasn't it? A. Yes, sir.

Q. That heavy white line is called "Estimated Population Served." What is that? A. That is the estimated population reached by our entire street railway system, Baltimore and vicinity.

Q. This more nearly vertical white line is entitled "Automobile Licenses Issued in Maryland," isn't it? A. Yes, sir, the State Licenses.

Q. And that shows a pretty constant and steady increase, doesn't it? A. Yes.

Q. Now the dotted line that is marked "Curve If there had been a 5% increase each year over previous year" That is a curve constructed for purposes of comparison, to show what your company's earnings would have been if there had been a 5% increase in passengers each year, is that right? A. That's revenue passengers. That's right.

Q. Revenue passengers would have been if there had been a 5% increase each year? A. Yes.

Q. Now the red line, is that a curve of actual experience or a hypothesis? A. Actual experience in revenue passengers.

Q. The red line then is the curve showing the revenue passengers that the company had for each year through the period covered by this graph, is that right? A. That is right.

Q. And the yellow line is what? A. The yellow line is the line taking the automobiles in the City of Baltimore as 60% of the total, and taking two rides per day in and out for each of those automobiles, and plotting those on in addition to the red curve showing what would have happened had the automobile rider used the cars.

Q. Let me see if I get that idea right. The yellow curve is constructed by taking the total number of pneumatic tire automobiles registered in the State of Maryland and from that arising by a process the number of riders lost to the United that that represents, is that right? A. That's right.

Q. And that process is what? A. To assume 60% of the total of the state within the city.

Q. Assume that 60% of the automobiles registered in the state are located in Baltimore City, and then how do you make the further step as to how many riders that represents that do not ride on the United? A. We just had to assume a ride in and out a day. Now of course that may not be enough.

Q. Carrying how many passengers? A. Carrying one passengers. Just the driver. Just one man.

Q. So then in other words, the yellow curve is an attempt to construct a curve that would have been followed if you had not lost passengers to the automobiles, is that right? A. That is correct.

Q. And corresponds roughly with the curve of a normal increase, doesn't it? A. Yes, sir.

Q. Now at various points on that yellow curve there have been cross marks made. Will you explain to the Commission why they were added and what they indicate? A. Mr. Tingley has in his exhibit something similar to this in assuming 400 rides per automobile in the state I believe per year.

Q. In other words, he has made a similar attempt to figure what are the car rides lost by the existence of Automobiles? A. Apparently, yes.

Q. And this method of figuring is that figuring on the average for each automobile in the state there are 400 such rides lost, is that right? A. Yes.

Q. Now what then do these marks that correspond so very closely with your own yellow line indicate? A. By using his figures of the total passengers and automobiles the cross marks show where he comes.

(Mr. Tingley) Almost exactly the same.

(The Witness) Very much alike.

Q. So although you have followed a different method, he has assumed 400 for each automobile in the State of Maryland, and you followed a different method by assuming 60% was in Baltimore, and you arrive at almost the same results by reference to what is indicated by your yellow line there? A. Yes, sir.

(Mr. Tingley) Checked each other's exhibit.

(The Witness) Yes. It's very interesting.

(Mr. Howard) When two exhibits arrived at by different computations come so close they are a good check on each other.

(Mr. Tingley) We had practically the same basis you did in getting at our 400.

(Mr. Howard) At any rate we are not in disagreement on the subject.

(The Chairman) I understand do I that the red line is the number of revenue passengers now carried?

(Mr. Howard) Each year.

(The Witness) This should be explained I think, Mr. chairman. When we get to 1924 the sharp drop there indicates of course the extension of zones. There is a dotted line above that that is an attempt to show where we would have been had the zones not been eliminated.

Q. You haven't attempted to project on that map your partial experience for 1927, have you? A. We have not.

Q. That stops at 1926? A. Yes, sir.

Q. But as far as you have gone, it would indicate a further drop, wouldn't it? A. Very material drop, yes, sir.

Q. Now Mr. Emmons that basis of arriving at the probable number of riders, lost from the total number of automobiles, is that based to any extent on the traffic survey? A. The traffic survey during one day showed, I think, 1.7 passengers per automobile coming into the city, over a cordon line count.

Q. The cordon line count was a line drawn around the central business district? A. Yes, Center Street, Franklin, Fallsway, Pratt and Green Streets.

Q. The middle of the city? A. Yes.

Q. And they took a count at the various points of entrance of every automobile entering there and the num-

ber going out and the number of riders in each, didn't they? A. Yes.

Q. And from those counts this method of arriving at the proportion was derived? A. From those counts we felt by taking all the pneumatic tires and assuming one person per car for all the cars coming into town would be about equivalent to their proportion of the cars of 1.7.

Q. In other words that only covered the entering into the business district and the exit from the business district in the course of the day, didn't it? A. That's what it covered, yes.

Q. And that's what this chart really shows, isn't it? A. On that assumption, yes.

Q. It doesn't show anything about the amount of pleasure riding that the automobiles have taken from the street cars, does it? A. It would be very hard to prove that or check it. We know that it's done.

Q. As a general matter, haven't you observed it? A. We do know it thru our Sunday and night business.

Q. And then isn't there a great deal of what you might call cross-town automobile riding, in cases where they are not going to and from the business district? A. There certainly is, yes, sir.

Q. And yet might take the street car if they didn't use the automobile? A. Yes, sir.

Q. Will you look at the exhibit which we heretofore tentatively numbered 9 and is now filed with the stenographer as Ex. No. 12.

NOTE: Statement above referred to above is here filed in evidence and marked Applicant's Ex. No. 12.

Q. This exhibit consists of two parts, a table and a plat or graph, doesn't it? A. Yes, sir.

Q. The graph is a mere representation of the results of the table isn't it? A. Yes, sir.

Q. Well now tell the Commission what that study is designed to show? A. The study is designed to show that it's becoming more and more expensive for us to

haul the people in the city of Baltimore due to the fact that the people are gradually moving out and we are having to extend our service so that our car miles on the long city lines is gradually increasing and our car miles on the short city lines are gradually decreasing.

I think it might be well, Mr. Howard, if I take a moment to explain the naturalness of that, because of statements that have been made by counsel on the other side, as to the fare being the cause of it.

For instance in going over figures of the census bureau we find this: that within the two-mile circle of the city the 1910 figures give 451,000, the 1920 figures give 454,000, Kelker, De Leuw gave in the 1926 traffic survey report 55% of our population within that radius.

Q. What year were they speaking of? A. They were speaking of 1925. They gave 55% of the population which would be 415,000.

What I want to show by that that without the question of car fare or automobile, the actual number in the two-mile circle has decreased.

Q. And what would have been the percent living within the two-mile circle in the earlier years, that you refer to? A. Been about 75% in 1910, 451,000 out of a total of 634,000.

Q. So those figures show a diminution both absolute and relative. A. They show a real diminution, and a great relative diminution.

Now contrary to that in 1910, we find only 183,000 people outside of the circle in 1925 we find 375,000 people, or an increase of 300% outside of this short district.

Consequently it's very natural to have this result, and I can't see how it can at all be blamed on the raise of fare.

Q. Let me get one thing clear. This table doesn't propose to be an absolute table of short riders and long riders. You have no data for compiling that? A. We have not.

Q. You merely take those lines which are in their nature short lines, and those lines which in their nature

are rather long lines, and compare the number of fares or tokens or tickets collected on each of those? A. That is right.

Q. As the method of arriving at the relative number of riders of each kind.

(Mr. Clark) May I ask a question there, Mr. Howard? Where did you say you get your figures for 1910? A. From the United States Census Bureau.

(Mr. Clark) Do they split up the city and give the population in different parts of the city?

(The Witness) Yes. The spot it and we took it off of that.

(Mr. Clark) How did they spot it?

(Mr. Swaine) They make their returns into sections. Election district is divided into certain blocks.

(Mr. Clark) Election districts have changed.

(Mr. Swaine) I had those and I drew a circle and got the people in it from the actual figures, both 1920 and 1910. They give it to you both ways.

(Mr. Tingley) And if an election district was partly in the city, and partly outside, was there an apportionment?

(Mr. Swaine) I made an apportionment.

I adjusted it back by the same proportion that the old city bore to the same old city?

(The Witness) I think Mr. Tingley those figures are fairly accurate, comparably so anyway.

(Mr. Tingley) Would it be possible for you to make up an exhibit showing how you arrived at the result?

(The Witness) Certainly, we can do it as well as I have given it. I have given it I think fairly clearly.

(Mr. Tingley) It just doesn't check with observation, and I would like to just exactly how you arrived at the fact that there are less people in the center of the city than in 1910.

(The Witness) We take first Kelker Deleuw's survey of 55% of the population in 1926, which shows 415,000. Then we take those 1920 and 1910 Census Bureau figures and get these other figures.

(Mr. Tingley) I know, but I am talking about spots and how you pick out the population from the spots.

(The Witness) I will have Mr. Swaine explain it to you.

(Mr. Tingley) Now what did you say the 1910 population was beyond the center of city or the circle?

(The Witness) 183,469.

(Mr. Tingley) And 1920?

(The Witness) 278,991.

(Mr. Tingley) Now 1925?

(The Witness) 374,900.

(Mr. Tingley) Thank you sir.

Q. Will you now file with the Commission the exhibit heretofore tentatively numbered 10, but which now constitutes Ex. No. 13.

NOTE: Statement above referred to is here filed in evidence and marked Applicant's Ex. No. 13.

Q. This exhibit is called an estimate of losses due to zone extensions in June, 1924, for the 12-month period from June 1, 1924, to May 31st, 1925.
The exhibit consists of three sheets, does it not? A. Yes, sir.

Q. That first sheet I believe has the result and the other two sheets are detailed calculations? Am I right? A. No, sheet No. 3 is the final result.

Q. And the first two sheets, are one them are on the basis of revenue passengers and the other on the basis of passenger receipts, is that right? A. That's right, yes, sir.

Q. Now explain to the Commission what that tabulation is and shows? A. The first sheet on the various lines

there was a predicted loss of 25% of revenue passengers on the Pikesville Line. 26% Owings Mills Section, 25% on the Emery Grove Section, and that predicted loss projected into the third column as revenue passengers was a total for those three lines, of 836,561, and the actual loss according to our records show 814,196 revenue passengers.

Q. Whose predictions were those? A. Those were our traffic department's predictions.

Q. They were used by the Commission, but they were made by your department? A. Yes, sir.

Q. In either case it doesn't look like anyone is to be criticised for them, because the actual and predicted are very nearly the same, aren't they? A. When you get to the total, yes, sir.

Now in the second column the River View Line, Back and Middle River, Dundalk and Curtis Bay transfer, the predicted losses were 95½% River View, 34.7% Back and Middle River, 91.4% Dundalk, and the entire loss in the Curtis Bay transfer, which, extended to the third column in revenue passengers, the total predicted loss was 8,848,406, and the total actual loss was 8,923,135, which again looks like a very close check.

Q. It was not less than, but a little more than the prediction? A. Yes, sir.

Q. Now the second sheet translates those figures that were in number of passengers into dollars and cents, doesn't it? A. Yes, sir, so that going immediately to the third column the predicted loss was $599,260.00 and the actual loss was $585,152.00.

Q. Again very nearly the same? And the third sheet you say does what? A. The third sheet takes the 1923-24 revenue passengers for that year period of 238 million and deducts from that the 1924-25 revenue passengers, showing a total loss on all lines of 15,451,983, from which is taken the loss in revenue passengers of the zone line extensions, showing there was a loss in other lines of 6,528,848.

Then, they have taken again the 1923-24 total revenue

passengers of 238 million and taken from the total of that zone extensions of 13,174,275 as shown on the first sheet, giving a total of lines not affected by zone extensions of 225,401,230.

Then they have taken the loss in lines without zone extensions of 6 millions, divided that by the total of lines not effected by zone extensions of 225 million, showing a loss in that year was really 3% instead of the percentage that was given before, a very high percent.

Q. That is due to the fact that you have a general loss not due to zone extensions? A. Yes, that was the reason.

Q. Now the next table that I will ask you to file with the Commission is one that was tentatively numbered 12, and is "Comparative Statement of Earnings and Expenses for 1926, compared with 1923."

NOTE: Statement above referred to is here filed in evidence and marked Applicant's Exhibit No. 14.

Q. Will you briefly explain to the Commission what this exhibit that is now number 14 shows? A. Exhibit No. 14 showing the result of the year prior to the last rate increases with the last year, the year 1926, that is the result of the operation of the year 1923, with the year 1926, showing the various accounts with increases and decreases, and showing that altho we have made an increase in total operating income of $253,910.21, and with the various charges it shows but an increase in net income of $33,788.08. I don't know how far you want me to go into this.

(Mr. Clark) There was a difference in the revenue passengers in those two years, you know.

(The Witness) Yes, sir, a lot of that is due to the zone extensions, Mr. Clark.

(Commissioner Harper) What is that difference in rents attributable to?

(The Witness) That was when the Maryland Electric came in and went into the Series A and Series B bonds, and financing and construction costs, it threw that up into the rental column.

(Commissioner Harper) That absorbs nearly all your increases in the net income.

(The Witness) Over half of it, yes. It would have gone into fixed charges otherwise because it had to be funded capital.

(Commissioner Harper) How is that item taken care of now, Mr. Emmons?

(The Witness) The item of rent?

(Commissioner Harper) Yes.

(The Witness) Going on the same way. Our payments to the Maryland Electric thru the Maryland Electric mortgage is in the shape of rents.

(Commissioner Harper) Is it in that same account?

(The Witness) Yes, that same account.

(Mr. Clark) So that the increase of 1926 over 1923 is $253,000.00 that is the increase in operating income notwithstanding the fact that in 1926 you carried 13 million less passengers.

(The Witness) That increased rate of fare gave us the increase in income in spite of the fact that we had the decreased passengers, yes.

(Mr. Clark) The reason I asked you that is that Mr. Markell said they got no benefit from that increase of 1924 in revenue?

(The Witness) Certainly not proportionate.

(Mr. Markell) Certainly not in benefit.

Q. I am handing you now two exhibits that were tentatively numbered 13 and 14, both of which relate to wage increases. Will you file the first of these with the Commission?

NOTE: Statement above referred to is here filed in evidence and marked Applicant's exhibit No. 15.

Q. And will you explain to the Commission what that table shows? A. This exhibit shows the wages of motormen and conductors from 1913 to 1927, and the present

ratio of the present wage compared to the previous early wage.

Prior to May 1, 1913, our motormen and conductors were paid a minimum wage of 19c an hour, a maximum wage of 22c an hour. This was gradually raised until they reached the peak during the war period of 1920-21 to a minimum of 47c and a maximum of 52c. Later with the depression of business the men accepted a reduction to a minimum of 45c and a maximum of 50c and have since been given slight increases until at the present time they have a minimum of 48c and a maximum of 53c, or on the basis of 1913 being 100 as used by the U. S. Bureau of Labor Statistics, the minimum wage is now 252% of the original and the maximum 241.

Q. Now in that connection, what is the wage of next year, 1928? A. The wage of 1928 will be one cent higher than 1927, according to agreement made last December.

Q. That is independent of any result of any rate case? A. That is independent of any result of any rate case.

That will be a minimum of 49c an hour and a maximum of 54c an hour.

Q. What are the two towns that most nearly compete with you in getting motormen and conductors? A. Wilmington and Washington. Wilmington's present rate is 56c a maximum and Washington's present rate is 58c maximum.

Q. So they are considerably above your rate this year and the next year? A. Yes.

(The Chairman) Mr. Emmons, are you familiar with the car mileage in Wilmington and Washington?

(The Witness) Car mileage? Total miles of track?

(The Chairman) Yes.

(The Witness) No, but I know it isn't the same as Baltimore. I know Washington isn't the same as Baltimore. I can give you that thru records if you wish.

(The Chairman) It's not material, I just wanted to know if you had the figures in your mind?

(The Witness) No.

Q. Will you now refer to the other of these two exhibits, that I asked you to produce and which is now filed with the Commission as Ex. No. 16.

NOTE: Statement above referred to is here filed with the Commission, in evidence and marked Applicant's Ex. No. 16.

Q. There are three pages in this exhibit, aren't there? A. Yes, sir.

Q. Explain briefly to the Commission what this exhibit shows? A. This exhibit shows the change of rate in wages of the various other departments of our operation from the same years 1913 to 1927 inclusive, the first sheet showing the power department lines and cables, the power division, substations, the Owings Mills Power House and at the right of the sheet shows the wages in these various places, with a basis of 100, are now at the rate of 203, 190, 222, 232, 228, 287, 210, 232, 253, 291, 253, 254, 285, 288, being higher over twice what they were in 1913, and some pretty close to three times what they were in 1913.

The next sheet is that of the track department and shows the various kind of workers as having wage increases on the basis of 100 to 168 ranging up to 307, the majority of the number in this department being the laborers, 445 out of a total perhaps of 550, and these men have been increased from 14c an hour in 1913 to 43c an hour in 1927, or 207% increase.

(The Chairman) My exhibit shows 307.

(The Witness): I was giving at that time the increase. It is on the basis of 100, it is 307, Mr. Chairman.

The third sheet is that of the shops department and you will notice that the wages in this place are all more than double, some of them two and a half time, in fact the ratio on the basis of 100 reads as follows: 249, 262, 253, 231, 220, 215, 205, 218, 268, 253, 237, 231, 204, and 209. The index as I stated is all more than double and some more than two and a half times.

Q. Now, Mr. Emmons leaving the exhibits for the time being, it was stated in your petition in this case, that the Company had practiced all the economies it reasonably

could in combating the present tendencies and present conditions. I want you to tell the Commission just how your operation is conducted, and what you have done in the way of introducing economies and in endeavoring to save where you could. A. We are rather proud of the fact that we have got a good organization. We endeavor to keep in touch with all the new things in the industry, in fact we introduce many new things here that bring people here to see what we have done, and since 1919 we have made a particular drive to see whether or not we could not take out every loose end and especially since the 1924 rate case, when I promised the Commission that we would work our way out on the 8-7½c basis, we have made strenuous efforts to do it.

We did in the 1924 case submit a list of economies that totalled over a million dollars a year and I have had prepared a list for me, bringing that list up to date, which shows at total of things instituted on this property since 1919 that give a total annual savings of $1,895,605.00, which if we had not been able to do would have forced us long before this to have come over to the commission for an additional rate of fare.

I have also a very careful analysis of how that amount has been absorbed by increased wages, by increased costs of various kinds, increased schedules and items of increased expenses.

Q. Suppose you tell the Commission what these items exist of in the main, so they can judge better of what you have done. A. Well, a great many of them are short lining certain lines. Here is a short line on No. 2 line, a short line of No. 4 line, Druid Hill Avenue Express Service on No. 5 Line. Short lining on No. 5 line, interline operation of three cars on No. 6 line, and four cars from No. 18 line to No. 5 line, interline operation of three trains on No. 4 line to No. 6 line; elimination of thru service to Fairfield, on No. 6 line; express service on No. 8 line, short lining certain cars of No. 10 line, establishing No. 11 line from Guilford Branch of No. 17 line, short lining certain cars of No. 12 line, interline operation of 14 cars from No. 16 line and 3 cars from 26 line, short-lining certain cars of the No. 14 line at Rognel Heights.

(The Chairman): Just what do you mean by short lining?

(The Witness): Turning them back. Where we found they had done their full duty, as scheduled service cars. According to our count, we found that car was not needed beyond that point, consequently if we had no cross over at that point before we put a cross over, turning that car back at that point, saving additional mileage.

Terminating Federal Street branch of Line No. 27 at Milton Avenue, storing cars in midday at Cumberland Street car house; discontinuance of ship yard schuttle service; discontinuance of Ferry Bar schuttle service; discontinuance of Prestman Street line; partial discontinuance of Pikesville Service; discontinuance of Gilmor Street schuttle service, discontinuance of Idlewylde service, general one man and trailer cars, and the articulated cars, the rerouting the rush hour stop plan, the general reassignment of cars, the power saving campaign, increased efficiency of maintenance of overhead, motorization of vehicles for the power department and engineering department. Then sale of unnecessary property. We have sold since I have been here, 16 different pieces of property that we determined were not useful for the Company's use. Then we have an increase in the mail pay, a reduction in insurance, increase in advertising contract, then there are two pages of savings by labor saving devices in the shops and in the various track departments, the whole totalling $1,895,000.00.

Q. That is per what? A. Per year.

(Mr. Clark): What period did that cover?

(The Witness): That covers all the present time economies put in since 1919. Going back pretty far.

(Mr. Clark) Are you going to file a copy of that as an exhibit?

(Mr. Howard): I thought I made that unnecessary by having him testify to that.

(The Witness): There are no items in here that I believe can be disputed. If you want a copy we can furnish it.

Q. There are some other economies that you introduced that you have not mentioned? The skip stop. A. The rush hour stop was in here and the power saving was in here. I might say, Mr. Howard, that in this power saving campaign, which amounted to quite a lot, we have developed what we feel in this property is something rather unique in the point of studying our lubrication to a point that I think no other company has ever studied it, and also our break-shue clearance and the use of all power only in determining times to do certain things to the cars and in all that the relubrication and the break-shue clearance and the new heater thermostat, the power calls, reducing the voltage, elimination of unnecessary car movements in peak hours. We have reduced our power requirements to the extent of 175,000 dollars a year over what they would have been had we not done that.

Q. In a word then, do you consider that your operations has been economical? A. We feel that the sheet that you have sent over, lining ourselves up with other companies shows that it has been economical.

Q. In other words, your operating ratio, has that been a good one? A. We feel it is.

Q. Can you refer to an exhibit that heretofore had been furnished the secretary of the Commission, and tentatively numbered 11? A. Yes.

Q. Will you now file that exhibit with the Stenographer, as Applicant's Exhibit No. 17?

NOTE: Statement above referred to is here filed in evidence and marked Applicant's Ex. No. 17.

Q. That exhibit Mr. Emmons is a comparison of you Company with a number of other typical companies in reference to car miles, revenues and expenditures for various purposes, it is not? A. Yes.

Q. And insofar as economy is concerned, how would it indicate that your company stood among those? A. The total operating expenses in cents per car miles is less than any of the eight larger cities and less than the aver-

age of 98 city companies as obtained from the records of the American Electric Railway Association.

Q. Then those cities enumerated then constitute all the cities that are as big or bigger than Baltimore in the east? A. Yes, excepting New York. We haven't taken that.

Q. And those large white circles, with numbers filled in, indicate the order in which they stand on those different subject matters that are shown by the calculations? A. Yes, from the highest down. The reverse is true, the higher the number the better the operation in this respect.

Q. You have the best operating per cent of any company indicated there, haven't you? A. We have, yes.

(Mr. Clark) Before taxes.

(The Witness) Before taxes is right. Taxes are after the operating expenses. If you put taxes in the sense per car mile, we're still in that position.

(Mr. Clark) With two exceptions.

Q. Even if you count taxes as operating expenses, if you allocate it per car mile, you would still be the best operated company, wouldn't you? A. I think that is true.

(Mr. Tingley) I don't believe it's material, but I don't believe that's correct.

(The Witness) Mr. Clark had made a statement in the intervening petition in cents per car mile that even if we add the park tax we would be the lowest in operating cost per car mile. We checked it up and we found that the statement was right. We think that's right, but it's rather immaterial. We are the highest in taxes, we all know that.

Q. Now I believe there is one other exhibit that was filed with the Secretary that hasn't been filed yet and that was the total or average fares in other cities.

(Mr. Tingley) If the Commission thinks that's rele-

vant to the emergency, I have no objection to it being filed.

(The Chairman) I see no objection to it's going in, but before you put that in, I would be glad if you would explain this Exhibit No. 17 a little more to me. I don't get it exactly. For instance, under cents per car mile, we find that Chicago is 45.86. Is that what it costs to operate a car mile?

(The Witness) That's the operating revenue, that's what they receive per car mile.

(The Chairman) Oh, yes.

(Mr. Howard) The columns relate back to the very heading at the very top.

(The Chairman) Then they are sixth.

(The Witness) They are sixth in operating revenue per car mile.

(Commissioner Harper) You are Number one in taxes?

(The Witness) We are Number one in taxes.

(The Chairman) Here Baltimore is fourth?

(The Witness) In operating revenue we are fourth, yes.

(The Chairman) What is that last grouping you have there? per cent of operating revenue, what does that mean?

(The Witness) These are often spoken of in either percentage of operating revenue or cents per car mile. That's the reason we made the two groups, you see, because we have to take the operating revenues to get the percentage. We have the first line of course in this third set of figures, but when you go to the second set, Chicago, for instance, spends 4.91 percent of their operating revenue in maintenance of their ways and structures. We have spent 5.1 of our operating revenue for maintenance of ways and structures, and so on thru.

(Commissioner Harper) Is your operating ratio 64.55?

(The Witness) Yes, including depreciation.

(Commissioner Harper) And that table indicates that you are the lowest of the Companies in operating ratio?

(The Witness) Yes, sir.

Q. Now, Mr. Emmons, I was directing your attention to the remaining exhibit that had been filed with the Secretary of the Commission prior to the hearing. Will you file that with the stenographer?

NOTE: Statement above referred to is here filed in evidence and marked Applicant's Ex. No. 18.

Q. This is merely a tabulation of the rates of fare in the cities that are as large or larger than Baltimore, isn't it? A. The average fare paid, yes.

Q. The average fare paid of course is in most cases a composite of the cash fares and of any special fares? A. Yes, sir.

Q. For instance, in Baltimore City the average paid is the result of any full eight cent cash fare paid, or tokens used, or school fares, commutation tickets, and of children's half rate fares, isn't it A. That is correct, yes.

Q. And you make that out in Baltimore to be how much? A. 6.82 cents.

Q. Now that note indicates that in the case of the Baltimore City fare, in arriving at the average fare, you have deducted the park tax, is that right? A. It does, yes, sir.

Q. And note C indicates that in the place of those cases that have a gross receipt tax, you have made a similar deduction in ascertaining the average fare there. A. Yes, sir. That deduction made a little change in the original exhibit we sent over in the fact that we found Cleveland slightly below us, whereas the first figure showed slightly above us.

(Commissioner Harper) How did you get the cash average fare in Pittsburg?

(The Witness) We got it from them. They allow so

many rides a week on their passes. Eighteen rides a week.

(Mr. Markell) Equivalent of the cost.

(Commissioner Harper) Not unlimited?

(The Witness) They are unlimited for a dollar and a half, but it makes them ride at least 18 times.

(Mr. Clark) Why did you leave Washington out of this exhibit?

(The Witness) Taking Baltimore and cities larger. For your information, Mr. Clark, Washington happens to be a larger average fare than ours, but we tried to keep to Baltimore and cities larger.

(Mr. Tingley) And as to wages, Baltimore and cities smaller?

(The Witness) No, that isn't quite true, but it's a fact that all larger cities than Baltimore have a larger wage than we have. In fact we made no comparison here with wages of other cities.

Q. You compared motormen's and conductor's wages? A. Yes. I took adjoining cities there.

(Mr. Tingley) Mr. Emmons, would you mind leaving with us that statement of economy so we can go over it and have it available for cross examination?

(The Witness) Yes. (Handing said statement to People's Counsel).

Q. Mr. Emmons, now I want you to explain to the Commission in your own way, what your views are, as based on the experience of the United Railways Company, and as based on the experience of other companies elsewhere or any other considerations that you think are relevant, I want you to give them your views or experience as to this proposition whether or not the economic limit as it has been called in fares, has been reached and whether or not an increase in the present fares of the United Railways Company would possibly have any such effect as has been suggested, that is to say, could it diminish the riding to such an extent as to seriously

impair the increase that would naturally result from an increase in fare?

(The Chairman) One moment. That seems to be a pretty comprehensive question, and it may take a long time to answer it. I don't want to have Mr. Emmons interrupted in the middle of his answer, so it is now seven minutes of the usual time we adjourn for the day. If it's satisfactory to you, or if Mr. Emmons can answer it by four o'clock, we will be glad to have him go on, but if he cannot the stenographer can read the question to him tomorrow morning and we will start fresh on that proposition.

EXAMINATION SUSENDED.

NOTE: At 3.53 o'clock P. M. the Commission then adjourned until Thursday, September 8th, 1927, at 10.00 o'clock A. M.

THIRD DAY.

Thereupon

C. D. EMMONS

A witness of lawful age produced on behalf of the applicant, having heretofore been duly sworn according to law and whose examination was suspended for the purpose of adjournment, resumed the stand was examined and testified as follows:

DIRECT EXAMINATION.

(Continued).

By Mr. Howard:

Q. Mr. Emmons, I want to direct your attention once more to the subject of this falling off in revenue passengers or falling off in revenue receipts. You have given the figures and data for the past months, but about one fourth of September has now passed and I want to ask you if you can give the Commission any information on what the last week shows as to the trend of events.
A. The last few days made us fell, Mr. Commissioners, that our 4% is probably going to be too small. There seems to be a continual falling off. For instance, when we get days that are absolutely comparable as to weather conditions and temperature or very close like as yesterday; it was clear both days, Wednesday, September 7th, 1927, and Wednesday, September 8th, 1926. The temperature, highest was 89 one day and 80 the other, and 63 and 61. We show a decrease of $2,-470.00 or 5.3%.

On Tuesday again the weather was almost the same, clear both morning and afternoon each day, this year 81-60, last year 83-70, a decrease of $2,898.00 or 6%.

Now we have days that of course are not so comparable like Sunday, a very bad storm last year, shows an increase, but that is not showing the trend.

Going back to the Saturday previous, September 3rd last year was cloudy both morning and afternoon, this

year was cloudy in the morning and clear in the afternoon, and the temperature this year was really better, 86-65 as against 67-64, a decrease of $2,698.00 or 5.4%.

The day ahead cloudy both morning and afternoon last year with a temperature of 73-60, this year cloudy and clear with a temperature of 83-65, showing conditions a little better for traffic this year. The decrease $1,518,00 or 4.2%.

I feel that the trend is still downward and still further shows the need of quick relief, and that the 4% we have used in a reduction of the receipts is probably too small.

Q. Have you given all the days in September that you have the results for? A. There are two days that I did not give. One was the Sunday which I said the weather conditions were so that they were not comparable at all. Last year it was cloudy in the morning and storm in the afternoon and night with the temperature 74-65, this year clear both morning, afternoon and night, temperature 86-67, and that day showed an increase of $2,697.00 or 9.3%. That's on a very small base of $25,000.00 last year.

And Monday, Labor Day, both years is also a day that is not entirely comparable because of the fact that things may be going one one year that are not going on before. The weather conditions were the same, clear both morning and afternoon, with temperature 90, quite hot last year, to 72 this year 86-62, we showed a slight gain of $876.00 or 2.5%.

A rough figuring shows that at the present time, averaging all the days, we are showing a decrease of about $1,110.00 per day.

(Commissioner Harper) What percentage is that?

(The Witness) That percentage would not reach the 5% or 4%, but I hold that when we get these comparable days, and show four, and five and six percent, that that does show the real trend. The percentage of that, I will have to work it out. It is 2.2%.

(Mr. Tingley) The first five days showed only 1½% in September, didn't they?

(The Witness) I haven't got it figured that way.

Q. Your method has been to compare the same day of the week with the same day of the week of the preceding year? A. In order to get the trend, yes, sir.

Q. Now, Mr. Emmons, reverting to the question that I asked you of the close of yesterday's sitting, which in substance was will you give your views and the facts that you base them on to the Commission with reference to this question that has been suggested of your company's rate reaching the economic limits? A. Well, I think that almost everybody will admit that today the individual thinks no more of spending a dime than when he did spend a nickel before the days of the war, with the exception of perhaps the street car fare. I think that is a true statement. We also have made computations of various classes of labor, and find that the laboring man today, even at ten cent, would not spend as much time as many minutes a day to pay for his car fare backward and forward, as he did at the labor rates when we had five cents.

The statement is often made that an increased carfare not only brings a loss of the revenue passengers, but an actual loss in gross receipts. A study of quite a number of different cities, including Baltimore, showed that this is not the fact.

In the first place an increase in fares is generally thought and received after the time and revenue passengers are themselves decreasing, so that it is inevitable that with or without an increase in fare a decrease would be shown. Just at the present time we are running four or five percent below last year's figures. Certainly an increase in fare could not be blamed for that much. It might be blamed for something over, but it could not be blamed for that much, and the criticisms of former increases have always been, while we have gotten these increases on a downward tendency, that the entire decrease has been blamed on the fare, which I think is not correct.

We had studied a great many different cities as to their changes in rate of fare, and I think it's well perhaps

to take Baltimore first. The original fare of five cents was changed to six cents in October, 1918. That was on a rising trend of business apparently, because it showed, even with an increase of 20% in the fare an increase in revenue passengers of 4.57%, and an increase in passenger revenue or receipts of 30.44%.

The increase from six to seven cents, two for thirteen cents of the 6½ cent fare was made in October, 1919, and showed an increase in revenue passengers of 4.48% with an increase in passenger revenue or receipts of 13½%.

Then at that time business began to go back to some extent. We had not enough money to meet our needs, and on the first of January the rate was raised to a flat seven cents, which gave at that time a decrease in revenue passengers of 2.58%, but an increase in receipts of 3.42%.

Now the last rate case of eight cents, two for fifteen cents, was on a decline of business, and the rate was put in effect the first of June, 1924, showing while we had a decrease in revenue passengers of 7.24% we still had an increase of gross receipts of 34%. Had we not had that increase we would have had a serious decrease in gross receipts, I am sure.

It seems to me the next city it would be well to take would be Boston, which is notoriously pointed to as being a ten cent fare city. That five cent fare was changed to a seven cent fare on the first of August, 1918. They showed with that change, and I have the history of that experience very well in my mind, because I was on the property later, this was done on a falling trend of business up there, they showed a decrease in revenue passengers of almost 18%, but at the same time they showed an increase in receipts of almost 15%.

On the first of December, 1918, the seven cent fare was changed to eight cents. They still had an increase in revenue passengers of 9% when they made that change, with an increase in receipts of 24½%.

Then on the 10th of July, 1919, the fare was changed to ten cents. They showed a decrease in revenue pas-

sengers of 6%, an increase in passenger revenue of 15.8%.

The next year, on the ten cent basis, their decrease was overcome absolutely, they went up 6.3% the next year, with an increase in receipts of 6.5%, and they have been then showing very much like other cities, 1920 went up 6.3% in revenue passengers, I just gave that, and 6½% in passenger revenue, and then in 1921 they went up .8% in revenue passengers, 5.7% in '22, 7.2% in '23. The '24 figure is left out. They made some changes in some little local rides up there. In 1925 they were back 4.4%; 1926 1.7%.

The next city I want to take, if you please, will be the twin cities of Minneapolis and St. Paul. In August 1920 they changed from five to six cents. They show a decrease of 8.41 for revenue passengers, but an increase in passenger revenue of 9.35.

In August 1925 they carried that for five years, they went to eight cents, ten for sixty cents, which means they practically retained the six cent fare, and that was apparently done a very much of a falling trend, because they had a 11.75% decrease in revenue passengers and 8.5% decrease in receipts.

Then on the first of January 1926 they changed the fare from eight cents cash to six tickets for forty cents instead of ten for sixty cents, which, with a falling trend of business and having a passenger loss of 4.76%, gave them an increase in receipts of 3.73%.

The next I will take will be Cincinnati. It's rather curious, because it started in this history at a high rate of fare, nine cents cash, eight and a half cent tickets, and on August 1, 1921, they decreased the rate to eight cents, having a decrease in revenue passengers of 3.45 on a decreased rate with a decrease in gross earnings of 9.36%. Then they made a further decreased rate from eight cents flat to seven and a half cent tickets. They show on that decrease an increase in revenue passengers of 2.56%, but a decrease in revenue of 1.69%.

Then on October 1, 1923, they raised it again to eight cents. On that raise they show an increase in revenue

passengers of 12% but an increase in passenger revenue of 4.77%.

The next change was January 1, 1924, in which they raised again to nine cents cash, eight and a half cent ticket, showing a decrease in revenue passengers of 1.6%, but an increase in passenger revenue of 6.51%.

Then on the first of March 1924 they made another increase to nine cents flat again, showing a decrease in passenger revenue of 2.69%, but an increase in receipts of 4.68%.

Then on the first of July 1924 they made another step up to ten cents cash, nine and a half cent tickets, showing at that time a decrease in revenue passengers of 9.94% and a decrease in receipts of 2.04%.

Then they stepped up on the first of October 1924 to a flat ten cents, showing at that time a decrease in revenue passengers of .13%, but an increase in passenger revenue of 1.82.

Their last rate change was under the rearrangement with the city in which they still charge ten cents for cash fare, but three tickets for a quarter. Under that arrangement they show a decrease in revenue passengers of 2.65% and a decrease in receipts of 16.05.

I have the various changes of Cleveland, Mr. Howard. I don't know whether the Commission wants to hear all these changes or not. They all carry out the point that I am trying to make, that if you have an increased rate of fare on a rising trend of business it doesn't materially affect the rides. If you have an increased rate of fare on a falling trend of business it doesn't materially affect the fall. If in all cases, as far as I can see, all the figures I have, and I still have the Connecticut Company, I still have Cleveland, I still have St. Louis, I have notes from Shereveport, Louisiana, the Chicago Service Lines, New Orleans, Seattle, Norfolk, and they all show the fact, that an increased rate of fare does not materially decrease the revenue passengers, but does in every case I think that I have, show an increase in earnings.

Now, for instance, at Norfolk. This is very late.

They just recently went to a ten cent cash far down there, three tickets for a quarter, four and one sixth cent school ticket, when the year before they had seven cents cash. It's a raise of three cents cash. They had six and a quarter cent tokens, practically a raise of two cents on a token, two and a half cents on the school ticket, they introduced $1.50 weekly pass, which requires them to ride fifteen rides at eight and one third cents before they get any reduction in the rate at all, and then it depends upon how much they ride, and they show on that change, which is a very large change, 3.8% increase in revenue passengers and a 10% increase in passenger revenue.

At Seattle, Wash., I think I should give, because that has been talked of a good deal as a municipally operated line, they tried an experiment for three and a half months of reducing the fare from ten cents to five cents.

Q. What time was that? A. On March 1, 1923, fares were reduced from ten cents cash, three for twenty-five cents, with free transfers, to five cents cash, two cents charge for transfers, and ticket rate six for twenty-five cents. During these three and a half months while revenue passengers showed an increase of 7.71 passenger revenues showed a decrease of 28.79%, and after that experiment they went back to the old rate of fare.

In New Orleans they made a fare reduction on September 7th 1922 from eight cents to seven cents, showing a decrease in revenue passengers of 7.97, and for the entire year the 7 cent rate is still in effect, the revenue passengers changed, that is at the end of that year, they showed that decrease, the revenue passengers changed for the entire year after that to .166 increase, while passenger revenue showed a decrease of 8.03.

Now St. Louis has had a great number of changes from the five cent fare in June 1917 successively to a seven and a half cent fare July 1927, and they show, for instance, it changed from five to six cents in June 1918, a decrease in revenue passengers of 2.21, with an increase in passenger revenue of 16.43. On the change from six cents to seven cents on September 20th, 1919, that's an upward raise they showed still an increase in revenue passengers of 13.36 with an increase in passen-

ger revenue of 31.34. The next change was an upward change from 7 to 7½, showing a decrease in revenue passengers of 1.50 with an increase in passenger revenue of 3.07.

Then they have a long time of a decreased rate of 7 cents for practically six years. During that period they show an increase in revenue passengers of 5.04, but a decrease in receipts of .40%.

The last change was to 8-7½, an upward change again, showing a decrease in revenue passengers of 5.27, they are running a good deal like we are, about 5% back, but the change in the rate of fare has again taken up the slack on that and given them a .61% increase in passenger revenue.

(Commissioner Harper): When was that change made?

(The Witness) That was made just in July, for just the months of July and August. We have their telegram.

(The Chairman): What is the situation in Cleveland?

(The Witness): I will be glad to read that. Cleveland started out in the days of Tom Johnson and the competition with the municipal line at a four cent rate, three for ten cents. And then in 1918 they made a change of the four cent rate, seven for twenty-five. On that change they showed a decrease in revenue passengers of 1.61, but an increase in passenger revenue of 14.28.

Then the next change was to a flat five cents and one cent for transfers.

(Mr. Tingley): When was that made?

(The Witness): August, 1918.

(The Chairman): Was this under the Taylor grant?

(The Witness): This was all under the Taylor grant, and of course the changes made automatically through a buffer fund or revolving fund, barometer fund they called it sometimes.

(The Chairman): Insurance Fund.

(The Witness): Yes, sir. In August, 1918, the change was made to five cents, decrease in revenue passengers of 7.45, but an increase in passenger revenue of 23.50.

The next change was a decrease, because they added to the five cents, eleven tickets for fifty cents. That was made in July, 1919. That decrease showed an increase in revenue passengers of 14.21, with an increase in passenger revenue of 10.65.

The next change was six for a quarter, another decrease, showing an increase in revenue passengers of 7.02, but a decrease in passenger revenue of 1.07.

The next change then was an increase. They went back again to the flat five cent fare in May, 1920, showing an increase; with increased rate of fare, they show an increase in revenue passengers of 1.15, with an increase in passenger revenue of 13.07.

The next change was a further increase to a six cent flat rate, nine tickets for fifty cents, in November, 1920, showing a decrease in revenue passengers of 12.45, and a decrease in passenger receipts of 1.07%.

The next change was a downward change to a flat five cent fare again in August, 1922. These all carry with them one cent for transfer. August, 1922, showing an increase in revenue passengers of 1.82%, but a decrease in passenger revenue of 8.41%.

The next change was another downward change, from five cents cash, eleven for fifty cents, in March 1923, showing an increase in revenue passengers of 3.07% but a decrease in passenger revenue of .02%.

The next change was an increase to a flat five cent fare again in September, 1923, and that shows a decrease in revenue passengers of 3.23, but a decrease only in passenger revenue of .07.

Next was another increase, six cents, nine tickets for fifty cents, in December, 1923, showing a decrease in revenue passengers of 8.99, but an increase in passenger revenue of 3.69.

The next occurred last October, 1926. They raised it

to seven cents cash, eight tickets for fifty cents, shows a decrease in revenue passengers of .88%, but an increase in passenger revenue of 14.55%.

Shrevesport, Louisiana, had a trial after a six cent fare effective June 1, 1920, and after running that fare to June 1, 1922, they made a reduction to five cents, and while the revenue passengers increased 7.14% the passenger revenue decreased 4.82%. In September of that year the rate was again changed back to six cents, and while the revenue passengers decreased 1.08%, the passenger revenue increased 6.57%.

(The Chairman) What is the population of Shrevesport? Have you any idea?

(The Witness): It's rather small, I think. Chicago, I have. On June 14th, 1922, the former fare of eight cents straight was reduced to seven cents cash, three tickets for twenty cents, with the result that the revenue passengers increased 4.25% but the passenger revenue decreased 11.6%.

(Commissioner Harper): Have you discussed Pittsburgh yet, Mr. Emmons?

(The Witness): I haven't Pittsburgh except a little memorandum as a result of the use of the weekly pass, which is always a source of more or less contention, and while they still seem to feel it's a good thing, our studies of the fact that they still carry less passengers, and had to operate more car miles, and have $100,000.00 less earnings during the year 1926 than they had before that, we can't see that it's really doing them any particular good.

I have a curious memorandum, just noticed in an English paper that I have been a subscriber to for a long time. The town of Blackburn is operated municipally. It's a town of about 120 thousand people, industrial, with cotton and calico and muslin factories, not far from Liverpool, the alderman of the town felt that they would get business back by reducing a two penny fare to a one penny fare, cutting it right in half, and they tried this experiment for seven weeks. It was on this idea that they would get enough business to offset the reduction. They figured it, due to other things, it would require a 40% in-

crease in number of passengers to offset the reduction made and after seven weeks' trial they put it back because they found only 4% increase in passengers.

Another curious little thing I noticed in a paper from Nova Scotia, they they tried up in one of their towns to find out what a five cent fare would do on Sundays. This reads "More figures available recently show further decrease in the receipts of the Nova Scotia Tramway and Power Company, owing to the adoption of the five cent Sunday fare." "Receipts for this year, as compared with those of corresponding Sundays of a year ago show a decrease of $1,085.00 up to the end of July." "A further series of decreases for August have been tabulated and read as follows."

They all show decreases, that the going back to a five cent fare has not offset the original fare. I do not, however, know what the original fare was.

(The Chairman): You say you haven't Pittsburgh? Have you any figures on Philadelphia?

(The Witness): We have not on Philadelphia. This figures we happened to have. We didn't eliminate them, it just happens we don't have them.

(Mr. Clark): You don't have Philadelphia, right close, and yet you have Shrevesport, a thousand miles from here.

(The Witness): I will get you Philadelphia, if you want, Mr. Clark?

(Mr. Howard): You are much better pleased with his not having it.

(Mr. Clark): No, no, we are absolutely in this emergency case unprepared to meet any such sort of a case as is now being presented. Now, we expect to be prepared when the time comes; that is, in the permanent case. He can go out and pick out cities here and there all over the United States that are favorable, and if there are any cities that are unfavorable, we don't know anything about it.

(Mr. Tingley): If the Commission, please, I think Mr.

Clark is unduly alarmed about that. I don't think the situation in other cities has any bearing on the case, and when the situation in other cities is relevant in the case, we will be prepared to meet it. I have no objection to this testimony.

(Mr. Howard): I would like to call attention to the point that the contention raised by Mr. Clark that we have reached the economic limit, and that a lower fare would produce a lower return, that all this testimony is in reference to his own point.

(Mr. Clark): The point I made was in answer to the permanent fare portion of your case and not the temporary.

(The Chairman): I don't think it helps very much to have this discussion. Go ahead with the examination.

Q. (By Mr. Howard) Now, Mr. Emmons, in the case of any increases that have been made in Baltimore during your experience, or in the case of any increases that have been made in any other cities that you know of, is there anything whatever that indicates in any way that the economic limit is being reached, or that a limit of fare was being reached any short distance above which would accomplish the result, if further increases were made of diminishing returns instead of increasing returns? A. I do not find them in any information I have.

(Mr. Tingley): What would you call a short distance? Two and a half cents.

(Mr. Howard): Let Mr. Emmons explain that.

(Mr. Tingley): The amount of the increase.

(The Witness): I do not feel that there is any question as to ten cents not being beyond the economic limit, and that is the answer you wish.

Q. Yes.

Q. Is there any indication from any of the evidence at your disposal that any such figure as that would reach the economic limit? A. No, there is not.

Q. Or very near it? A. No, sir.

(Mr. Tingley): What would you think the economic limit was?

(The Witness): I think when you get above ten cents, then you have got to begin to do some zoning.

(Mr. Tingley): In other words, when you reach ten cents, you have reached the complaining point?

(The Witness): For a short ride, but not the complaining point for a ride of long distance. Now take, for instance, the rides in London, the zoning rides which the London people stand for and which the American people will not stand for, American people desiring one fare within the city, and our friend Mr. Clark having helped us get one fare in the city in the last case. When you take the two penny ride which they had, one time I made a study of this in London—at that time four cents; I think it's been reduced to three cents now, maybe two, maybe it's a penny. But if you take that with their zones and apply them to a ride to Roland Park, the people in Roland Park would pay 16 and 18 cents instead of the present rate of fare. If you would apply them to a ride that you can get, a continuous ride on a transfer, that we have, we figured out that time, that it would cost 26 to 28c under the London system of zones. It's very difficult to collect. The Public Service Company of New Jersey tried it out at great expense and simply could not do it. They went to a great deal of expense and spent a great deal of time and money and reconstructed their cars in order to do it, but it wasn't an American system.

Q. Has there been any case to your knowledge in which anything resembling the English system you have referred to has been successfully introduced or tried in this country? A. Not to my knowledge. No, not for city fares. Some interurbans operate like steam roads.

(Mr. Toole): How about Wheeling, W. Va.?

(The Witness): I don't know their operation.

(Mr. Toole): They work on a zone system.

(The Witness): They probably work on a five cent zone system outside of the city; we do that, too.

(Mr. Toole): It's a zone system in the city and even then their distances are not as far as our city distance is from town to town.

(The Witness): The people might say we work on the zone system, because we have those various zones that Mr. Benson referred to yesterday.

(Mr. Toole): Three years ago, when I was there, you paid four cents and the next scale four cents, and every time you passed a certain street corner the conductor comes in, and by the time you get your hands out of your pocket you have to put it in again.

(The Witness): The people in Baltimore wouldn't stand for anything like that.

Q. Mr. Emmons, in reference to Baltimore, I don't quite understand what you said about the last increase in 1920 or the increase that I believe was granted at the end of 1919, wasn't it? A. Yes.

Q. Was that followed by an increase or a decrease in revenue passengers? A. That was followed by a decrease in revenue passengers and an increase in passenger revenue.

Q. And it overbalanced the other? A. Revenue passengers showed a decrease of 2.58 and the passenger revenue increased 3.42%.

(Commissioner Harper) You mean in 1920?

(The Witness) In 1920. That's for the period of that seven cent fare.

(Commissioner Harper) But you had a right large increase in 1920.

(The Witness) But we took the whole period.

Q. What was the immediate result in 1920? A. There was no decrease at all, this shows it. (Referring to Applicant's Ex. No. 11.)

Q. When did that increase take effect? A. The first of January, 1920.

Q. And your revenue passengers for 1920, were they

considerably larger, or slightly larger, or what, than the previous years. A. I will have to correct myself.

(Commissioner Harper) My recollection is they increased 10 million.

(Mr. Markell) The opinion of the Commission in 1924, said it was the largest increase they ever had.

(The Witness) That's right, 10 million passengers.

(Mr. Tingley) That was an increase on an upward trend.

(The Witness) That was an increase on an upward trend. That's the reason I say a trend has more to do with it than the fare.

Q. You didn't mean to suggest that the rising fare was the cause of the increase in revenue passengers? A. No, what I meant to say, it didn't have any material affect. It depended upon the trend of the business at the time.

Q. Mr. Emmons, I want to make one thing clear that perhaps is obvious, though it might not seem so. Suppose there is a change in fare and it is followed by an increase of a decrease in the number of revenue passengers. What I want to bring out is whether or not, the decrease or increase in revenue is anything proportionate to that?

Let me put this as an illustration. Suppose in any given year like 1926, the fare had been reduced instead of being what it is, suppose that reduction had lead to increased riding to such an extent that the gross receipts were the same, would it follow that the net return to the Company would be the same? A. No, naturally it would cost us more money to haul the additional number of people.

Q. You had I believe a calculation showing that, although it isn't here? A. Yes.

Q. We will file that later. Is it small or great? A. It's very great on the assumption that we made of a reduction to five cents, I think it was.

Q. So that I might express it this way: that if you

reduce your fare in the hope of making it up by gaining more passengers, you would have to gain a great many more passengers than enough to bring your gross revenue up to the same point, wouldn't you? A. That is right.

Q. And conversely if you increased your fare, and if that should lead to a falling off in the number of passengers, in order to make it bring you a net less revenue, you would have to lose a great many more passengers than enough to merely bring the gross receipts down to what they were on a lower fare? A. Yes, because you could lessen your expense by the lesser number of people.

(Commissioner Harper) Do you feel that your reduction in car miles, which resulted in a cut in the service has attributed somewhat toward a reduction in revenue passengers?

(The Witness) Very little, Senator, for this reason: that we have been very particular, not to cut car lines until the passenger business has fallen off and in looking over our schedules, although we have been compelled this year to make quite a number of cuts, and that to my mind is one great need of a sufficient amount of income, through an increased rate, very promptly so that we can give service. We have had to cut 27 different lines out of 25.

(Mr. Tingley) Would you say the service now is adequate, Mr. Emmons?

(The Witness) It takes care of the business according to the Commission's rules, but I don't think it's the kind of service the people of Baltimore ought to have. For instance, Mr. Tingley, I don't believe any line is good service, what I would call good service in a city the size of Baltimore, where a person has to wait over ten minutes for a car. Now, that's a long time. A ten minute service on many lines is more than the traffic justifies, but to give service I think we ought to have it. Now in order to meet our expenses, we have had to drop lines back to 12 minutes, some to 15 and I think to give good service to the people of Baltimore, we ought to have sufficient income to have a car there at least once in ten minutes.

(Mr. Tingley) If you get any increase in fare would you consider the skip stop system constituted good service?

(The Witness) I would, because it speeds service very materially. It gets our cars through since they have settled down to it. During the period of trial with rush hour, and rearrangement of schedules, it was hardly possible to know what the real result would be, but in the first six months of this year, they have been able to find they do make extra time, they are able to take cars off, that these cars that are taken out from the lines that have the better type of cars, can be put on lines that have the poorer type of cars, so that the rush hour service has not only helped in getting the longer line person home more promptly during that time, but it has also helped the lines that have had the poor type of cars to have a better type of cars.

(Mr. Tingley) Do you think it's at all significant that the decline of passengers set in about the time the rush hour plan was instituted?

(The Witness) Not a bit. It's been true all over the country.

(Mr. Tingley) Has that been true to the same extent?

(The Witness) Worse in some places.

(Mr. Tingley) And not so bad in others?

(The Witness) It just depends on the business. Now Detroit, for instance. I have the month of June figures here which is a tabulation in red. The first line is Baltimore. The month of June we went back about 2.34. The next is Boston. It went back 3.50. There is no change there. Brooklyn went back 1.24. Buffalo went back 5.91. Chicago went back .24.

(Mr. Tingley) An increased fare in Buffalo to ten cents?

(The Witness) Not at that time. It's since this time, but it's just a falling that compelled Buffalo to ask that increased fare, and it's that falling off that's compelling us to be here today.

(Commissioner Harper) You say you don't the skip stop plan, as you call it, has had the effect of reducing passengers?

(The Witness) I do not, some one, two or three people, but compared to the total number we haul, absolutely insignificant.

(Commissioner Harper) Don't you think where you cut the service it has had a tendency to discourage regular riders?

(The Witness) It might a little bit, but the cut has been absolutely necessary.

(Commissioner Harper) I have heard people standing right in front of this building complain about the long delay of the car coming up Calvert Street, and they complained of it and said this is the reason the traffic is falling off.

(The Witness) To some extent, but I have a memorandum showing where we deliberately built up service and it cost us twice as much to extra business back, that we got back. We may lose some, yet, but if I hadn't cut service, the way I have been doing, I would have been over here long before I am, and if it hadn't been for these great gaps, I wouldn't be here now. I think the answer to Mr. Tingley is these other cities; the rush hour stop hasn't anything to do with it. In my mind, not only Baltimore, but in other places, the great growth of the automobile and the use of the automobile, have hurt us. I don't think business depression is doing it. I think it's entirely the automobile, and it's a condition that's with us and a condition that we have got to live through until it settled down to a permanent basis.

(Mr. Tingley) If it's the automobile that's responsible for the fall off in revenue passengers, why is it that it's the short haul business that's chiefly affected and the long haul business is increasing?

(The Witness) I think I had the explanation to that yesterday.

(Mr. Tingley) But that wouldn't account for the increase in the half fare riding, would it?

(The Witness) It would mean this, that the person who runs the automobile and the rider we are losing today is the adult rider, the eight cent and seven and a half cent man.

(Mr. Tingley) Wouldn't you expect that the automobile would affect the long haul business more than it would the short haul business.

(The Witness) I think it has, but the reason it shows this way is because the short haul territory has in itself not increased. That is if you hadn't any automobile at all the traffic in the short haul territory would have shown a decrease. Now then the long haul territory would have shown a big increase, but the automobile affecting both of them, I think you are right, has affected the long haul more than the short haul, but because the short haul has decreased in itself without the automobile traffic, it shows worse in a comparable way than the long haul, which has the larger percentage decrease, because you still have that big increase. I would like to say, if Mr. Tingley isn't convinced that the rush hour stop has not done this, I would like to read the rest of the result of these other cities.

(Mr. Tingley) You can do it if you wish to.

(The Witness) Cleveland went back in the month of June about 4.81%

(Mr. Tingley) That was an increased fare, wasn't it?

(The Witness) They have some increased fare. Detroit had no increased fare and they went back 12.08. Indianapolis went back 3.92. Kansas City had no change of fare, went back 5.12%. Philadelphia no change in fare went back 7.55.

(Mr. Tingley) What do those cities show for August and September?

(The Witness) We have just sent them wires for August figures. I think I have July here for some places.

(Commissioner Harper) How much did you says Pittsburg went back?

(The Witness) Pittsburgh went back 1.26%, St. Louis 2.64, Washington about 3.46, New Orleans, 4.33.

(Commissioner Harper) The only city that has the weekly pass went back less.

(The Witness) No, Brooklyn went back only 1.24. Chicago Surface Lines, .24. That's both surface and elevated.

Q. (By Mr. Howard) Now Mr. Emmons I want you to describe to the Commission, the present financial situation of the United Railways especially with reference to its floating debt and then to explain what effect, if any, this decrease in revenue has on that. A. The decrease in revenue is of course giving us less and less money this year to operate on, about $300,000.00 less this year so far, than we had last year and has compelled us to borrow from the banks very consistently, until at the present time we have a borrowing from the banks to the extent of $1,925,000.00 in the name of the United Railways, and endorsed borrowing on the part of the Baltimore Coach Company of $445,000.00 or a total of $2,300.00.00.

At the same time we have obligations to the city of paving, payable at different times, part will be payable the first of the year of $319,620.00.

We have contract obligations with the Westinghouse and General Electric Company, part-payable every six months, of $352,253.00, an obligation at the present time of about three million dollars.

We have notes coming due in September and quite heavily in October and we feel we just have to, if at all possible, get in a position to have credit to keep going.

Q. Your bank loans are usually for what period? A. Four months.

Q. And you say you have those maturing right along beginning with this month? A. Not mainly this month. In October. We have a few this month, but October we have $600,000.00 coming due.

Q. What's the total amount of all your floating debt?

A. Including the Baltimore Coach? endorsed by the United Railways?

Q. Including that? A. $2,370,000.00.

(Commissioner Harper) What are the proceeds of those loans applied to?

(The Witness) Some of them have been used for our needs in various ways, part of them to cover construction expenses. We have about a million and a half construction.

(Commissioner Harper) That's capital account?

(The Witness) That's capital account, if we can get in a credit position to fund it, but we certainly are not in that position at the present time .

(Commissioner Harper) The proceeds are not used for operation in any way.

(The Witness) No, of course they are seasonal, March and around there. A million dollars has to be paid out in fifteen days during those periods.

Q. Besides what you mentioned, you have relatively short loans compared with an ordinary funded debt? These outstanding notes? A. Yes.

Q. How long do they run for? A. Two and a half year notes, the recent issue, they are three year notes, and the recent issue runs for three years, from the 1st of August.

Q. What I want to direct attention to, how far it is important at the present moment to your Company to preserve its credit as a borrower? A. Well, we not only have those coming due, but we have a million and a half of Baltimore Traction coming due in '29. We have the Maryland Electric of about $4,000,000.00 coming due in '41. In fact, the next five years with the construction we feel we should do, we have something over 15 million dollars to take care of.

Q. Now some suggestion has been made about the large extent to which your Company, which the securities of your Company consists of bonds and notes as compared

with stock, that's true, isn't it? A. That is unfortunately true because we have never been in a credit position to let us sell stock and we have been hoping that by having established a continuous dividend period, that we could get in position to sell preferred stock some day.

Q. In fact there was an Act of Legislature to assist you to sell preferred stock? A. Yes.

Q. Changed the taxable basis of it? A. Yes.

(Mr. Toole) What act was that?

(The Witness) I have forgotten the number.

Q. 1927? A. I might say this, if you will, Mr. Howard, about our bonded debt, Mr. Clark has made reference to its great growth, and I have a statement here of our interest charges from 1913 to 1926, and it seems to me that they have grown very slightly for a business of our kind.

The total interest charges in 1913 was $2,734,756.00 In 1926 $3,382,102.00 or an increase of about $600,000.00 in 12 years, about $50,000.00 a year. The fact is, if you put that on a percentage of our total revenue, the percentage of our interest charges has decreased from 30.31% in 1913 to 20.7% in 1926.

That is the ratio of money that we spend today for interest charges is materially less than it was in 1913.

(The Chairman) That's the ratio of interest charges to gross revenue?

(The Witness) To gross revenue, yes.

Q. And of course during that period your funded capital has increased too, hasn't it? A. It has increased. It makes that increase $600,000.00 in payment of interest charges.

Q. Now. Mr. Emmons you have shown yesterday what the effect for the year of the present fall in revenue passengers would be. I want you to explain to the Commission what affect, if any, that has on your credit as a borrower, and on your ability to issue preferred stock in the future? A. I think that it makes it almost impossible to issue preferred stock, and we unfortunately

feel the effect of our decrease in earnings when we go to borrow money. That's a thing that I am a little embarrassed to talk about, because it's not a very happy thing for a President to admit that he has had any difficulty in borrowing money. It is a fact, I think, that did not our Baltimore bankers have confidence in the Company, and the management and also confidence in the Public Service Commission and its fairness, that we would have more difficulty than we have. But then in our recent borrowings we ran across some few questions that began to show that our Baltimore bankers were not altogether pleased with the results that were being obtained.

Q. Now in reference to that issue of preferred stock. Suppose you fail to get any increase of this fare? Would that have any effect on your ability to do that? A. I don't think it would be at all possible. Not to any extent at all.

(Mr. Clark) Now are you talking about the emergency or the permanent fare?

The Witness) I am talking about the emergency.

(Mr. Clark) An emergency fare you think will have that result?

(The Witness) I think if we don't get a change of rate in the fare very soon that the result will be that we won't be able to issue preferred stock, certainly not during the present year.

(Mr. Howard) I think that's all I have to ask Mr. Emmons, unless something occurs to the Commission.

(Commissioner Harper) How far has the operation of the Coach Company been a burden upon the railway system?

(The Witness) It has been a burden only to the extent that we are having to help carry it on these notes. At the present time it is just getting out from being a burden. Last year it was a burden to the extent of, last year it had a deficit of $31,000.00, the year ahead a deficit of $28,000.00. A large part of this deficit, unfortunately, is in our endeavor to help develop Randallstown Real

Estate. The year before a deficit of $15,000.00. The year before that, twelve. The year before that, twenty-one. At the present time, we are running much better than usual. We have gotten some new buses at a very small expense and have gotten our equipment in good shape and have gotten our schedules rearranged, so that the first seven months of this year shows a profit of $29,-000.00 as against a deficit last year of $31,000.00. We are feeling that the bus Company is getting to a point where it will carry itself, but that's a curious thing that this fare of ten cents, with our seven and a half cents, we are going back, but the ten cent rate on Charles Street is not going back .

(Commissioner Harper) How is your Fayette Street line?

(The Witness) Fayette Street is coming up some, too. We are still running a little deficit on Fayette Street, but it's getting pretty well wiped out.

(Mr. Tingley) People generally seem to think that a bus ride is worth more than a car ride.

(The Witness) They do, but I can't see it. I don't thing a bus is near as comfortable a ride.

(Mr. Howard) Does a bus rider get a transfer privilege?

(The Witness) He does not, and has a much shorter ride.

(Mr. Howard And pays a ten cent straight fare?

(The Witness) And pays a ten cent straight fare.

(Mr. Howard) As I understand the Coach Company business you refer to includes all the bus business you are interested in?

(The Witness) Outings and tours and all the bus system, yes.

(Mr. Howard) Some of that bus business is taken to offset possible competition, isn't it?

(The Witness) Yes. I might answer the Senator about East Fayette Street. In 1926, the month of June

it had a deficit of $2,629.00—the month of June this year that deficit was reduced to $1,024. So that's gradually coming over.

(Commissioner Harper) Whether there is a deficit or profit in the operation of the Coach Company, where does that appear in you accounts?

(The Witness) It doesn't show. It's kept entirely separate. In fact the Coach Company are operating some things that are shown on their books that perhaps should show on the railway and would make the railway worse. They have the Bentalou Street, the Chester Street line, the Monroe Street line, the Alameda line, and all of them lose money and we would have to take $35,000.00 off our net income if we had to absorb the deficits of the bus lines due to the railway itself.

(Commissioner Harper) That would have been last year, but not his year?

(The Witness) This year also. Those lines are going back. I have it right here. 1926 the deficit of the railway bus lines was $35,870.00, and from January 1 to July 31, seven months this year, it is $15,939.00.

(Commissioner Harper) That's the railway bus lines.

(The Witness) What we call the railway bus lines.

(Commissioner Harper) They are simply extensions to your car systems?

(The Witness) In a way the Chester Street line is not. While it does to some extent parallel the car line, we look upon that as a separate line.

(Mr. Howard) You spoke of railway bus lines or the deficit due to the railway itself. Explain just what you mean by that?

(The Witness) Wo count certain lines of the bus company as competing lines, like the Charles Street, the Mt. Royal, the East Fayette, the Baltimore Coach Company we divide into two sections. One we take the railway bus lines out of their own report, and see what the real result of the Baltimore Coach Company is.

(Mr. Howard) The railway bus lines being what?

(The Witness) The Bentalou Street, which is a connection between Edmondson Avenue and North Avenue on Bentalou Street.

(Mr. Howard) Do you mean they are running as feeders to the United or cross connections?

(The Witness) Cross connections and feeders both. Now the Alameda is a feeder. The Monroe is a cross connection between Edmondson Avenue and Columbia.

(Mr. Howard) In other words they are to help the United Railways' service?

(The Witness) Yes.

(Mr. Howard) And they are the ones to which you refer as Railway bus lines?

(The Witness) Yes.

(The Chairman) You do transfer from those lines?

(The Witness) Wo do transfer from those lines, yes.

(Mr. Howard) And your losses have been principally in which lines?

(The Witness) In the railway bus lines.

(Mr. Howard) And those losses are not included in any way in your operating figures?

(The Witness) They are not. They would make the operating statements even worse.

(The Chairman) Senator Benson, was anxious to get away and unless there was some objection, he would like to ask Mr. Emmons a few questions.

CROSS EXAMINATION

By Mr. Benson:

Q. Mr. Emmons, I would like to ask you a few questions regarding your exhibits 13 and 12. A. I have them, Mr. Benson.

Q. Take No. 13 first. Pikesville extension, how much

was that in mileage? What mileage it was before the addition and what mileage it added. A. The old fare limit was Rodgers Avenue and Park Heights Avenue, and the extension of what we call the Pikesville line was out to Slade Avenue, a distance of about a little over two miles. It's 2.4 miles to Belvedere.

Q. A little over two miles extension? A. About two miles, yes.

Q. Now, what distance was that line from the center of the city before the extension approximately? A. It's a long line and unfortunately, the same as you are trying to do, it's one that's been used as a ruler to string around to see how far other fares ought to go.

Q. Now, how long was it before the extension. A. I haven't that.

(Mr. Howard) That's a map of the city.

(The Witness) About seven and a half miles.

Q. Seven and a half before extension? A. No, about five and a half before the extension.

Q. Now, you made an extension on Owings Mills? A. The extension of the city fare was made to Slade Avenue, then there was a slight adjustment of distance out towards Owings Mills, and Emory Grove, I have not the figures here about those changes. I can get them, Mr. Benson, I don't think they are material. The change was made.

Q. But from Slade Avenue to Owings Mills is approximately how many miles? A. This map does not show it. I don't believe I have a map here that shows it. If you wish I will bring that here this afternoon. Of course, that isn't one zone, there is a zone in between there.

Q. You have an Owings Mills extension, what does that mean? A. That was the adjustment of what was left of the Emory Grove line after the city fare was extended to Slade Avenue. There were three zones in there before, and we would have had a very small at Pikesville, if we had not made an adjustment, consequently we made the distance we had remaining in there to three zones again and that moved the zone points that were

previously zone points out a little further in both cases, so I wouldn't know from this map, although I can find out in the office what change was made.

Q. Then you wouldn't know about Emory Grove, either. A. No.

Q. Now, the River View line, that line extends not only to River View, but runs down to Dundalk Junction, doesn't it? A. Yes. You mean the present arrangement?

Q. Yes. A. Yes.

Q. How far does that run into Baltimore County? A. I have got .71 miles.

Q. I notice your predicted loss on that line was 95.5%, so there must have been quite an extension there at that point. A. Well, there was very little, because almost 100% of the loss was predicted, and that was due to the fact that River View takes nearly all the people.

Q. I understand that, but your extension—you had two fares before that to River View, didn't you? A. Yes, we did.

Q. And you extended to River View for one fare and then on down to Dundalk Junction? A. Yes, in order to get a meeting point there, that was the only excuse for it, so that people up in that section could come back to River View Park on one fare.

Q. Now, the Back River and Middle River lines? I notice you estimated 37.4%, how much extension there did you make on that second fare? A. The second fare was extended from the old fare zone at 18th Street to the new city line which was 2.1 miles. I mean the city fare was extended 2.1 miles.

Q. Yes. Now the Dundalk line that also runs in the country, doesn't it? Dundalk Junction? A. Yes, sir. Now those two lines outside of the city, just the same as the Emory Grove line were readjusted as to fare points with the part that was left beyond the city limits or beyond the new established city fare limit, with the exception that at Sparrows Point, one entire zone fare was eliminated.

Q. Now, the Curtis Bay transfer. What does that mean? A. That was a three-cent charge that was formerly used for all city fares for people riding over Baltimore and Light Streets. You could get on at Baltimore and Light and go to Curtis Bay for a regular city fare, but if you came beyond that or wanted to transfer to Curtis Bay you paid an additional three cents.

(Mr. Howard) Collected at that central point, then?

(The Witness) Collected at that point or on the Curtis Bay cars.

Q. Now, I notice that in your exhibit No. 13, you mention the seven lines that I have gone over, but you don't mention line No. 35 which runs from Saratoga and Howard to Lorraine Cemetery. A. This is the zone extensions that were ordered by the Commission in June, 1924. That's a much later thing, and your friend to your right can tell you all about it, because he was the one that was guilty of getting it.

Q. In other words you specially favored him? A. He was such a nuisance he had to do it.

Q. You specially favored Lorraine Cemetery? Is that the idea? A. No, we did not. The Lorraine Cemetery line comes in the city limits and is a very short extension of the Hillsdale line; the Lorraine is a very short distance outside of the city limits. I think less than a mile. So that in taking the Lorraine line over it was with the intention of having the ownership of all the city railway lines in the City of Baltimore. We did not own that line.

Q. But you took it over and extended the one car fare out into the county half a mile? A. About, yes.

Q. When that line, before you took it over, had a greater haul to the center of the city than the entire haul to Halethorpe did? A. If you measured that way that might be true, yes.

Q. Isn't that true? A. I haven't the distances here, but that possibly is true.

Q. Now can you name me a single line extending out into the suburbs of Baltimore, there into Baltimore County that has as short a haul for its first fare as the

Halethorpe line? A. I think your statement is correct, but there must be some one that is short and some one that is long.

Q. Now can you name me more than three lines that extend out to the suburbs in Baltimore County that haven't a longer haul for one fare than we have for two? A. That's the difficulty when you have a city whose city is not the center of a circle, so that all the lines are the same and your statement is probably correct.

Q. You are still talking about the city; because the city is square in most directions, and in this particular direction of Halethorpe it slants off. Is that any justification for a railway company or a Commission in saying that they can extend half a mile because it suits their convenience or a mile because it suits their convenience and yet can't extend a mile and seven-eighths and when you add the two together its a less haul than you are hauling anywhere else. A. Senator, there is just this about it. As far as we are concerned there must be some limit of haul.

Q. Sure. A. And it seems to me that the people in the country, being in the country, and sometimes having arranged to be in the country in order to get the advantages of lower taxes and the lower expenses of living in the country are rightly expected to pay more car fare out there.

Now we just have this difficulty. You take your distance outside of the city line. I appreciate all you say and all that, but if you take your distance outside the city line, the very next thing Towson could measure that distance outside the City Line, neglecting the fact that their city line is much further, and so if you went to Halethorpe outside the city come to Towson outside the city.

Q. I think you want to be fair. I am sure you do. A. I do want to. I have a hard job to be fair.

Q. But I just want to ask you whether when the law says that there shan't be any undue preferences made for one locality over another, there is nothing said there about Baltimore City being the boundary, this is not a

Baltimore City corporation, is there any reason why you should extend out to Lakeside, half a mile through those country estates beyond Roland Park, and not extend half a mile even out the Halethorpe line? A. My memory is there was quite a contention when a zone line was put out there, and we were forced to go out to Leeds Avenue, which is quite a distance outside of the city limits.

Q. How far? A. A quarter to a half a mile.

Q. Don't you think it's more nearly one hundred and fifty yards? A. I really don't know, but I know it's outside of the city limits.

Q. And the only reason you went there was because there was a high bank there and the people had to walk on your right of way that one hundred and fifty yards. You didn't want the people to walk that one hundred and fifty yards up between two banks of the railway? A. Any way it extends out beyond the city limits.

Q. It does, and so does the Catonsville line, so does the Edmondson Ave. line extend an unappreciable distance beyond the city limits. A. I think the only thing to do is let the Commission see the facts and have them determine it, but the fact is that our fare zones, according to the people of various sections are supposed to be elastic. Now, for instance, out the Towson line we have our stop at the city limits, quite close to the city limits. The next development beyond there, Stoneleigh, are continuously after us to extend out to them, and then the next one would be and the next one would be, and there must be some limit of our ride.

Q. I understand that. Assuming that that is substantially correct. A. Substantially correct, yes.

Q. Can you see any fairness in having eight of the principal lines of your lines having materially longer distances of haul, and five of them extending into Baltimore County appreciable distances for one fare than Halethorpe gets for two? A. The only thing is that I can see there must be a limit some place, and the city limits has been made and an endeavor to keep the limit in the city limits. If you take the end of that Halethorpe line on that map and swing that circle around

you will have us back on the Back and Middle River Line just at the point where Mr. Clark had hinted the contention for us to extend, and its just a fight, fight, fight all the time to such an extent that we cannot make ends meet.

Q. Now let me ask you this one question. Your proposition is that you have been compelled to come here because the yard stick has been lengthened, hasn't it? A. Part of the reason.

Q. One of the material reasons? A. No, the decrease by use of the automobile.

Q. Well you said this last increase was not an increase because you lost practically what was given you by an extension of zones? A. That's right.

Q. Now if you were given a rate sufficient to take care of the situation, you have no particular prejudice or reason for objecting to Halethorpe receiving the same haul that eight out of eleven other lines extending into the county receives? A. With the qualification that I have a sufficient rate to meet the situation.

Q. That's what I say. Now you mentioned a while ago, that you thought that you were not reaching the economic limit until you reached ten cents, but that when you got above that, that you thought there would have to be zones.

Now, I want to ask you in fairness if you don't realize that people buying homes, and people in competition with other builders, aren't being placed in a position where they are being put beyond the economic limits when you put them on a twenty-cent straight fare with the same haul that other people get a ten-cent fare or less, whatever it may be? A. That would look very plausible when you look at the map and see the distances, Senator.

Q. If you were given by the Commission sufficient raise in fare to justify the giving to Halethorpe a single fare, would it not in all probability rapidly enure to the advantage of the United Railways in this respect; that whereas now your lines out at Overlea, Hamilton and those sections, your traffic is very heavy and lines are overloaded because of the advantageous position those

particular localities have had for years with reference to rates, that it would give the neighborhood of Halethorpe, Leeds and Arbutus an opportunity to build up and thereby distribute your traffic somewhat? A. That's quite possible. I think that a single fare would tend to greater development, yes.

Q. Now I just want to ask you one more question, and I am quite confident of my position, and that is that you realize that two fares to Halethorpe, two ten-cent fares would materially slow up the development in that community? A. That depends. If the people out there are using automobiles, that fare wouldn't make any difference.

Q. Of course, some of them use them, but do you happen to know the class of citizens that are living out there? A. Yes, don't think there are as many automobiles around there as compared with other sections of the city.

Q. Nothing like as compared to Lakeside and Roland Park. Even those who have automobiles they don't use them to go back and forth to their work. Most of them use the trains and electric cars? A. I couldn't answer that.

Q. You know the travel has increased on the electric cars in the last two or three years? A. It shows so. Of course our change of routing upsets the calculation so much that we couldn't say definitely.

Q. But you know your receipts on the second fare zone have increased? A. I think it has increased, but I have not made that comparison lately.

Q. With reference to Exhibit No. 12. I don't understand this exactly, Mr. Emmons. I notice you have short city lines and long city lines, then you seem to have lines included in above figures. I don't know whether that left hand lines are the short city lines and the right hand lines the long ones or not? A. What we put that lower list there for was in order to show that we did not hand pick out lines to do this. The left hand ones are the short lines used and the right hand ones are the long lines used. The heading at the top is supposed to come down to the bottom of the page, Senator.

Q. Now, I notice you leave out No. 3 line. I presume that you made a note down there. A. We haven't put all the lines on. We wanted to get lines that were definitely short city lines and lines that were definitely long city lines.

Q. Now, you left out some very definitely long ones, No. 23 Middle River, No. 35 Lorraine Cemetery. A. No. 23 Middle River, of course, has the outside zones off. What we are trying to do is to keep this in the city. There is no reason why Lorraine is not on here.

Q. Then, this don't bring it down to date. A. It brings it down to and including 1926.

Q. No your Middle River line was extended before 1926 to your city line? A. Yes.

Q. Down here at the bottom you say, your total of long hauls 5.88 miles. Now, I just want to ask you if you add into that list of long lines the Middle River, Lakeside—. A. No. 29 is Lakeside line.

Q. Does that go all the way through in your measurements or does it just go inside of Baltimore in your measurements? A. I don't recall offhand. Look down No. 10, they have Roland Park, Lakeside and Riverview, its included in the No. 10 line, both the No. 29 and No. 10 run in connection with the Lakeside line and they have included the Lakeside and Riverview extension in the No. 10 line.

(The Chairman) That is, you have a jerk-water line running out to Lakeside from the Roland Park car barn?

(The Witness) Yes.

Q. Now, the Sparrows Point line, is that in here? No. 26, the Sparrows Point line is quite a long haul? A. Yes, it's an industrial line and moves up and down according to business.

Q. Nevertheless, if you were to add those long lines in there, your average of city and long hauls extending them out into the county, because there is no reason that I can see why in your figuring your long hauls if there is a half a mile in the county, and if there is four miles in the city and two in the county why you have got the

right to make an arbitrary distinction there, that would though increase your average if you had added those other long lines that you have left out beyond the point of 5.88 as your long hauls, wouldn't it? A. As to length of line, yes. The purpose of this exhibit was not to show that.

Q. I understand that, but I didn't want to be put in the position that our line, which was six and a quarter to six and a half miles, was an extremely long line. A. We had no idea of making comparisons.

Q. Can you point out any line around Baltimore that has a shorter haul for one fare than the Halethorpe line has for its second fare? Any second fare that's as short as the Halethorpe line's second fare? A. I believe that is the shortest.

Q. And it's the shortest the first fare, isn't it? A. From the center of the city.

Q. Yes. A. It looks like it is, yes.

Q. And it's shorter for two fares than No. 8, No. 15, No. 35, No. 28, No. 26, No. 19, No. 32 and No. 5 are for one fare? A. With this exception, of course, that city end of the fare you have the privilege of a transfer.

Q. It's shorter? A. Yes, with that exception.

Q. Haven't they the same privilege that we have? A. They do, yes.

Q. How can you say there is any exception, then? A. If your rider takes a transfer and gets on the longest ride that he can take that would be equivalent to a long rider getting a transfer and going on your line, but nevertheless it's true as you say, they have the same privilege.

(Mr. Benson) Thank you, gentlemen, all of you, very much for letting me have this chance.

NOTE: The Commission then adjourned for the purpose of taking a short recess.

AFTER SHORT RECESS

CROSS EXAMINATION

(Continued)

By Mr. Tingley:

Q. Mr. Emmons, would you say that the company is faced with a Receivership during the next two or three months if the emergency increase isn't granted? A. Not a Receivership, but a very serious situation, due to our credit condition.

Q. Now, let's analyze that serious situation for a few minutes. The United Railways & Electric Company have borrowed from the bankers to the extent of $1,925,000.00 on its own paper, is that correct? A. We have.

Q. And you have endorsed paper of the Baltimore Coach Company to the extent of $425,000.00? A. We have.

Q. What are the maturities of that paper? A. I will give them to you. September 30th we have $25,000.00 coming due, and another $25,000.00—$50,000.00 on September 30th, October 27th we have $500,000.00 coming due, October 28th $100,000.00; October 31st, $25,000.00; $625,000.00 due in October.

Q. Have you any apprehension of not being able to renew those notes if you wanted to do it? A. I am fearful of the ability to do it. I would say this, that if the bankers, as I said before, if the bankers had not some confidence in us, and some confidence in the Public Service Commission in protecting our situation I think I would have trouble.

Q. Have you had any indication from the bankers that you would be required to pay that amount in the next two or three months? A. We have had some indication from the bankers that they don't want us to come over and borrow at the present time.

(Mr. Tingley) Mr. Kormann, will you please read that question.

NOTE: Question here re-read by reporter.

A. We have not. Because it's been our practice of paying our loans when they come due. Bankers expect that.

Q. You have no apprehension of not being able to pay that, have you? A. We hope to be able to. I am not sure that we can.

Q. Now, the Maryland Railways Company $4,000,000 notes that fall due in 1931, they, of course, don't constitute an emergency situation, do they? A. Not at the moment, but the credit position created today might carry through.

Q. But I mean that so far as the next two or three months are concerned they don't constitute any emergency? A. Not in the next two or three months.

Q. And the same would be true of the $1,500,000.00 Maryland Traction Company notes, due in 1929? A. Excepting as the credit situation of today will be reflected through.

(Mr. Howard) Explain what you mean by that.

(The Witness) If we get in a bad credit position today it's very much more difficult to recover it than to keep the credit position we have established in the last five years of having a reasonable margin to go on. We have not made the million, but it has held our credit position by being near to it.

Q. You wouldn't anticipate that the next two or three months would create any emergency by those Baltimore Traction Company notes, would you? A. Not the Baltimore Traction Company, but as I say the credit position that might be lost might carry thru.

Q. Would the same thing apply to the three-year notes that have been issued and have two and a half years more to run? A. That same remark would apply.

Q. Now, this case that you have just described of your going to the bankers, those are the four months' notes due in September and October, aren't they? A. Yes.

Q. Now the Westinghouse contract, when is that payable? A. Every six months.

Q. And when will the six months expire? A. There will be another payment due in January. We paid one in July.

Q. The next two or three months wouldn't hold any emergency as to that? A. Not as to that.

Q. Now, this obligation due to the city for paving, when is that payable? A. Our next payment is due some time next year. It's one year after the completion of various work. That is extended thru out the year beginning some time next year.

Q. So that there is no necessity for paying that in cash during the next few months? A. Not in the next few months.

Q. I understood you to say that if an increase in fare is granted the skip-stop plan of operation, will nevertheless be continued? A. We think it should, we think it's good operation.

Q. In the 1924 hearing the Company assured the Commission that if an increase were granted, service would be improved, is that correct? A. If we had the funds it depends on the funds, whether it can improve service.

Q. The skip-stop plan of operation was instituted to effect economies in order to avoid an application for a rate increase, wasn't it? A. That was part of the reason. And also to give what we feel is better service.

Q. Nevertheless, if a rate increase is granted, the skip-stop plan of operation will be continued? A. We think it's proper service.

(Mr. Howard) Explain what you mean by better service.

(The Witness) It gets people home quicker and it lets us operate more economically. It lets us use better equipment for other parts of the city, and in the whole the city benefits by the rush hour stop.

Q. You think that the public generally feel that, Mr. Emmons? A. Excepting those who skip their stops which is a very small percentage of the total population.

Q. Despite that fact, if an increase is granted, the

wages of the men will be increased materially, won't they? A. We expect to do that.

Q. Do you think the interest of the men come ahead of the public generally? A. I think our men are entitled to great respect and great consideration.

Q. And the public, too. A. The public also, yes, but our men have really helped this situation along and helped us work along on the old rate of fare, as far as we have been able to do it, with being content with a less wage and less than adjoining cities have.

Q. We will come to that later, in connection with your exhibits 15 and 16. Suppose we take Ex. No. 1. Have you that before you? A. Yes, I have No. 1 before me.

Q. Does this or any other exhibit submitted indicate that the service will have to be curtailed or abandoned during the next two or three months, while the ten-cent fare case is pending, unless an emergency increase is granted in the interim. A. I think we must make the garment suit the cloth. We have not, however, made any change in service since the first of July.

Q. You don't think that any changes in service would be necessary whether or not an emergency fare is granted, any reduction in service? A. I would feel if an emergency fare is not granted that we should then begin to make a curtailment, that would let us hold back some of our losses.

Q. Would you think that was necessary from your operating standpoint? A. From the standpoint of making receipts making expenditures and have any kind of a margin at all. I think it would be necessary.

Q. What service reductions would you think were necessary? A. I couldn't give the different lines, we would simply have to cut them to meet the traffic conditions.

(Commissioner Harper) What were your passengers per car mile in June of this year as compared with June of 1926?

(The Witness) I am not sure that I have that.

(Commissioner Harper) Well, don't stop to look that up.

(The Witness) I will try to find it.

(Commissioner Harper) Never mind.

Q. Mr. Emmons, have you any reason to anticipate that operating expenses and maintenance will not be earned during the next two or three months, if an emergency increase is not granted. A. No, our own exhibits show we expect to make that, yes.

Q. Are there any extensive extensions or improvements that must be made during the next two or three months? A, No extensive ones, other than under way now and a large part of which is the compulsory reconstruction of track due to city paving.

Q. Do you consider this first exhibit an appropriate exhibit in an emergency case? A. I do. I think it shows a continued falling off of passengers, and the fact is that as we have our monthly reports they begin in January to show that we were falling off, in January was no falling off, but when we got to February we began to see that we had fallen back of the last three years, '24, '25 and '26, when we got to March it showed we had fallen back of '20, '21, '23, '25 and '26, when we got to April we had fallen back of '20, '25 and '26, and when we got to May we had fallen back of every year since 1920, $152,000.00 back during the month of May, back of May, 1920, and when June began to show the same thing, June has fallen back of every year since 1920, a total of $165,000.00 less than 1920, we began to feel it was absolutely necessary to get some relief. We waited, however, until July came thru. July again fell back of all the years since 1920 and July itself was $250,872.00 back of the month of July, 1920.

I think that the constant falling off and increasing falling off certainly shows a real need for an emergency if anything ever showed it. You can't show, as Mr. Clark wants, a sudden dropping off, of the rides, or a sudden rise in wages or costs because our rises in cost have been going steadily upward since 1913, and we can show by indexes and charts here today, if you want to go into that that our costs today are 210 to 212 per cent over

twice what they were in 1913. That's been gradual, it isn't sudden, but we have reached that terrific point.

The same thing with this going down of earnings. It's been gradual since February and gotten to such a point that the rising costs and the falling off in earnings, to my mind has created a point approaching a real catastrophe for the Company.

Q. Now that catastrophe, does that threaten a continuation of service during the next two or three months? A. It threatens a continuation of service that the people of Baltimore ought to have.

Q. Does it threaten a receivership? A. It does not.

Q. Now, the exhibit shows that January passenger revenue increased .03%, doesn't it? A. .03%.

Q. And February decreased 1.83%? A. Yes, sir.

Q. March was worse, 2.77%, isn't that right. A. Yes.

Q. Then April was better than March, with 1.63? A. Yes.

Q. May was worse, with 4.20? A. Yes.

Q. June was better than May, with 3.49%? A. Yes. I might interrupt that Saturdays and Sundays make some of those changes.

Q. I understand. Then July was worse with 4.55? A. Yes.

Q. August was better with 3.13? A. On account of Sundays.

Q. September so far shows a decline of only 2.2? A. But we really feel that September is really running about 5%.

Q. Altho the average only shows 2.2? A. That's due to certain conditions of business from days of the month.

Q. Would you say those figures indicated a progressive trend of decline? A. I think it does.

Q. Doesn't August show a less decline than May, June and July? A. Due only to Sundays. If you will take a day by day comparison, it will show 4.33.

Q. How about the first days of September? A. There is only one very bad Sunday last year that gave us a large increase this year and the trend and fall has shown in the last two days of 5 and 6% the real trend for September.

Q. Would you say that an estimated rate of decline in passenger revenue of 4% for the remaining six months of the year could be really predicated on this exhibit? A. I feel it could be predicted on the exhibit and I feel it would be low.

Q. The average loss for May, June and July was 4.08%, wasn't it? A. That may be so, yes.

Q. That was shown in the original draft of the exhibit as you have gotten it up and I think it is shown on this exhibit? A. That probably would be so.

Q. And for May, June, July and August, it's 3.85%? A. That's probably so.

Q. And the first days of September would bring it still lower? A. You can't take those first days on account of the one day that throws it all off.

Q. Now, weren't May and June abnormally cool months, this year? A. I would have to look back to our records on that. I think I can tell you.

Q. Can't remember it, as a matter of fact? A. I wouldn't remember it definitely. I have in this statement for June, I happen to have one week, and it shows this year, Monday partly cloudy, last year rain and clear. Tuesday partly cloudy, last year clear. Wednesday rain and cloudy, last year partly cloudy. Thursday this year cloudy, last year clear. Friday clear, last year cloudy. Saturday clear and cloudy, last year clear. Sunday cloudy and rain, last year cloudy. With temperatures 84-60 for this year, 72-48 last year; 79-57 this year, 79-52 last year; 64-55 this year, 74-53 last year; 74-58 this year, 72-55 last year; 69-55 this year, 66-52 last year; 72-49 this year, against 71-52 last year; 71-56 this year, against 77.55 last year. It don't look like there is such a great amount of difference.

Q. Mr. Emmons, if it is true that both May and June are abnormally cool months, and that further is they

showed a high percentage of days on which the bad weather obtained, would that affect riding to parks and places of amusement? A. Yes, but I don't think the assumption is true.

Q. Suppose it's shown to be true? A. That's the one reason perhaps that could be given, but I have here the month of June and it doesn't seem so very different from the comparison.

Q. Now, about the month of May, have you that? A. I read the month a moment ago.

Q. You called it June. A. I beg your pardon. I was reading for the month of May. June looks about the same. For the temperatures of this year it shows 89-72 as against 81-62; 80-56 against 88-62; 98-64 as against 92-68; 84-64 as against 84-66; 82-58 as against 87-66; 81-67 as against 97-74; 82-63 as against 72-68.

Those are just two weeks that happened to be here and it doesn't look to me like there is any grave difference.

Q. There isn't any serious question about July having been a five Sunday month? A. I think not.

Q. What effect would that have in dollars on the revenue from the company? A. It would make July this year less than last year.

Q. About how much? A. It runs anywhere from ten to fifteen thousand dollars difference.

Q. Mr. Emmons, was the drop in revenues the sole reason for asking for emergency relief? A. It's the effect of the drop in revenue on our credit position, on our need, on our ability to give service.

Q. Does the necessity for making a good showing for refinancing and marketing preferred stock have anything to do with the application? A. No, not particularly, but we think we need to be in that position if we can.

Q. How long ago did you start to work on the emergency case? A. In July.

Q. That was the first time that it had been considered? A. We have been talking about it during June, but we

didn't begin working on it until July. About the middle of July.

Q. Didn't you start on it before June? A. No, we anticipated we might possibly need an emergency case during June. As I say these statements that I read showing a continual falling off, when we came to June showing a couple hundred thousand back of June, 1920, we began to feel that we really had to do something.

Q. Take exhibit No. 2, Mr. Emmons. Were you present during the hearings of the skip-stop case? A. No.

Q. Do you remember that Mr. S. E. Emmons stated in the Skip-Stop Case that December, 1926, was one of the best months the company ever had? A. I wasn't here, but that is possibly so.

Q. December, 1926, was a very good month, wasn't it? A. I think likely it was.

Q. And January showed a gain in revenue passengers of .32%? A. Over January of the previous year.

Q. That's right. February showed a loss of 1.61%? A. Right.

Q. March showed a loss of 2.51%? A. Right.

Q. Then April improved, showing a loss of 1.39%, didn't it? A. Yes.

Q. That was less than the February loss? A. Yes.

Q. And less than the March loss? A. Yes. I don't know how Sundays and Saturdays affected that. I presume it did.

Q. Then May was worse again with a loss of 3.93%? A. Yes.

Q. And June improved over May with a loss of 3.24%? A. Yes.

Q. July shows a loss of 4.20%? A. Yes.

Q. And August showed a loss of 2.89% which was again an improvement? A. Yes. The Sundays did that.

Q. Did the same thing happen with respect to these

few days of September that happened in the case of passenger revenue? Is the percentage lower there too, in other words? A. If you average them, yes. But I believe the average of the first few days of September is not a fair statement of the trend of the present time. I think the days that compare absolutely as to temperature and to weather give a fair comparison and that runs from five to six per cent.

Q. I am going to take that up with you in connection with Exhibit No. 3. But would you say that this exhibit indicates a progressive trend of depression? A. With our knowledge of the day comparison, I would say yes.

Q. Doesn't the fact that the situation improves from month to month and then drops off again militate against that? A. No. I think the day to day comparison shows that and the Sundays that come in there upset that.

Q. I think you said in your testimony yesterday that the decrease in revenue passengers was in full fare riders and the commutation and half fares increased, that's correct, isn't it? A. That's what the statements show.

Q. And that accounts for the loss in passengers being at a lower percentage than the loss of passenger revenue? A. Yes.

Q. Doesn't that indicate that the fare has something to do with the riding habit? A. I don't think so. I think it shows that the man that's paying the full fare today is the man who is driving the automobile today.

Q. How about the boy that's paying the half fare. He is not riding so often, is he? A. No, he is riding more than he did before because he is not driving an automobile. I don't think it's because he got half fare.

Q. Wasn't a great part of the loss in passengers experienced on Saturdays, Sundays and holidays? A. Yes, we find that is true, that Saturdays, Sundays and holidays are decreasing more than the week days.

Q. Approximately what per cent would you say that constituted of the total loss? A. I am not sure that I can give that. I have a statement.

(Mr. Howard) Are you speaking now of loss over last year?

(Mr. Tingley) Either last year or over an average year, Mr. Howard?

A. I don't think this is marked. I had this statement worked out for me, the percentage of average passenger receipts of Saturdays, Sundays and week days of 1926 and 1927 over 1913. They have taken the average of the various days of 1913 and the average of the various days of 1926, and they find that the week days today are 96.8% of the average of the week days in 1913. No, that's increased 96 per cent while the Sundays have increased only 41.4 per cent, and the Saturdays have increased only 77.9 per cent.

Q. That would indicate a falling off of pleasure riding, wouldn't it? A. On the street cars. I would says its according to the automobile.

Q. And if it has, doesn't that indicate that people are only riding on the street cars when they have to? A. Well, I think it's quite natural if they have an automobile in front of their house they ride in an automobile.

Q. Suppose they haven't an automobile? A. If they can't get some friend to take them I guess they will ride on the street cars.

Q. Doesn't that indicate that the fare affects the riding habit? A. I don't think it does at all.

Q. Don't you think the fact that there has been a marked decline this year over last year, that the fare in a time of depression at least has some effect on the riding habit? A. I don't. I really believe if we were to haul these people for five cents, if they could get in an automobile they would do it.

Q. And you think the increase in commutation and half-fare riders doesn't set off against them at all? A. No, because the commutation rider is due almost entirely to the Sparrows Point activity, and the half-fare boy isn't driving an automobile. As he gets older and gets into the adult class he gets a machine and begins to ride.

Q. He gets into Mr. Markell's jazz age. Do you think the application for a fare increase affected the number of revenue passengers during August? A. Not at all.

Q. The short haul business is falling off, isn't it? A. Yes. It shows that it is through one of these exhibits of ours.

Q. And the long haul business is increasing? A. That's due to the population increasing. It is.

Q. Wouldn't auto competition being expected to chiefly affect the long-haul rider? A. I feel we had that explanation; that the long-haul rider himself having increased to such an extent the automobile competition can affect him to a greater extent than the short rider can, but nevertheless the short-rider population is itself decreasing and would make the larger decrease due to the automobile still be less than the decrease of the short-haul rider.

Q. Aren't the indications that a great many people are walking, rather than taking short car rides? A. No more than before. I think some do.

Q. Don't you think the number has been increased right along? A. I don't think so.

Q. Don't you think the indications are that a considerable number of people consider that the present rate of fare is more than the value of the short car ride? A. I think there may be a few but very few in number. As I say a person might jump on a car and put in a nickel for a short ride and say that because its 7½ cents he walked today, but I think that's so negligible that it doesn't mean anything.

Q. Have you Exhibit No. 3 before you, Mr. Emmons? A. I will get it. I have it, yes.

Q. Now that shows, I believe, that the maximum temperature of thirteen days in August, 1927, hit eighty degrees or more, doesn't it? A. I didn't count it, but it gives the temperatures there.

Q. I think you can check it? A. I will take your word for it, Mr. Tingley.

Q. Don't it show that on one day it hit ninety degrees this year, ninety or more? A. During August.

Q. Yes. A. Yes, on Sunday the 7th it hit ninety-one.

Q. That's the only one, isn't it? A. That's the one I see, but there are a lot of 87s.

Q. Now, as against that thirteen days that hit eighty and one day that hit ninety, doesn't it show that twenty-two days in August, 1926, hit eighty degrees? And ten days hit ninety degrees? A. That-probably true.

Q. Doesn't it show that six days this year were clear all day, in August, 1927? A. That seems to be a fact.

Q. Does it show that twice as many or twelve were clear all day last year? A. That seems to be a fact.

Q. Then you would expect car riding, and particularly more pleasure riding in August, 1926, than in August, 1927, wouldn't you? A. Unfortunately the clear days haven't come up to expectations this year as to pleasure riding.

Q. Well let's see about that. Sunday, August 21st, 1927, was clear all day this year, wasn't it? A. Yes.

Q. With a maximum of temperature of 80 degrees? A. 80-63, yes.

Q. And the comparable day in 1926 was cloudy with a maximum of 71? A. Yes.

Q. And the day this year showed an increase over last year of $4,400.00, didn't it? A. That's right, yes.

Q. Now take August 15th. That was also a better day as to weather conditions as the comparable day last year, wasn't it? A. Monday?

Q. Yes. A. Yes.

Q. And it showed an increase in revenue this year, didn't it? A. $435.00.

Q. Wasn't the same thing true as to the 24th? A. $553.00 increase.

Q. Doesn't that indicate that the riding was good on

good days this year and bad on bad? A. Yes, I think that is true, but if you get down to Sunday the 28th it shows that the falling off of riding on a bad day this year as against a clear day last year was $10,571.00 as against the Sunday you took which gave an increase of $4,483.00.

Q. Right, and that was 20% of your entire loss for the month. That's practically $11,000.00 out of your $55,000.00? A. Yes.

Q. And that was a rainy day? A. Rainy day this year as against a clear day last year.

Q. Now take the week end of Saturday, August 6th, and Sunday, August 7th, of this year. Saturday, August 6th, this year was cloudy all day, wasn't it? A. Partly cloudy.

Q. Saturday the 6th? A. Partly cloudy.

Q. Partly cloudy all day? A. Yes.

Q. And the temperatures were what? A. 82-64.

Q. Last year what was the weather situation? A. Cloudy in the morning and clear in the afternoon.

Q. So that last year was a better day than this year? A. Yes. Hotter day to 91-75.

Q. And as a consequence of that there was a loss this year of $2,252.00? A. Yes.

Q. Now take Sunday. Sunday this year was cloudy in the afternoon? A. Yes, but clear in the morning.

Q. And the temperatures were what? A. 91-67.

Q. Last year it was clear all day, a comparable day, wasn't it? A. Yes.

Q. The temperatures were what? A. 87-69.

Q. So that last year's day was much better than this year's? A. Yes.

Q. And the loss this year was $5,185? A. That's right.

Q. Now take Saturday the 13th. This year it was clear all day, wasn't it? A. Yes.

Q. Last year it rained in the afternoon? A. Yes.

Q. And the loss this year was only $94.00? A. Yes, still made a loss.

Q. Sunday the 14th, this year, rained all day? A. Yes.

Q. Last year rained in the afternoon? A. Yes.

Q. A better day last year than this? A. Yes.

Q. A loss this year of $5,762.00? A. Yes, I think that shows business is falling off? A. Yes.

Q. Saturday the 27th? A. Yes.

Q. Cloudy this year, all day? A. Yes.

Q. Loss of $5,139? A. Yes.

Q. Sunday the 28th?

(Commissioner Harper) Those two days showed a big difference of temperature too.

Q. Yes sir. Sunday the 28th, rained all day this year? A. Yes.

Q. Clear all day last year? A. Yes.

Q. Loss of $10,571.00? A. Yes.

Q. That totals a loss of $29,000. for those three week ends, doesn't it? A. Yes.

Q. And that's about 52% of your total loss for the month, isn't it? A. Yes, that would be about it.

Q. And all three of those week ends showed worse weather conditions than the week ends last year? A. That's right.

Q. Now let's take a slightly different situation. Let's take the week ends Saturday the 20th and Sunday the 21st? This year Saturday the 20th was cloudy all day? A. Yes.

Q. The temperatures were 75-64? A. Yes.

Q. Last year it rained all day? A. Yes.

Q. Temperatures were 63-60? A. Yes.

Q. Slightly better day this year than last year? A. I would say very much better.

Q. A loss of only $189.00? A. We would expect to gain that day instead of a loss with those weather conditions.

Q. Your gain came the next day, Sunday the 21st? Clear all day, this year? A. Yes.

Q. Temperature of 80-63? A. Yes.

Q. Last year cloudy all day? A. Yes.

Q. Temperature of 71-60? A. Yes.

Q. This year shows a gain of $4,484.00. A. Very likely due from the hangover from the day before.

Q. Doesn't that indicate and indicate conclusively, that on days when you get anything approaching fair weather this year you have good results? A. No, I think it indicates conclusively that we have got to have a terrific comparison of weather to offset the difference in traffic.

Q. Doesn't it show that 20% of your entire loss came on one bad Sunday? A. On that day, yes.

Q. And that 52% came on three bad weather weekends, that were worse than last year? A. Yes, it looks to me like this thing of yesterday and day before yesterday is illuminating, in the fact that the comparison of weather and the comparison of temperatures are almost equal, and yet yesterday we made a decrease of 5.3% and day before yesterday a decrease of 6%.

Q. How about August of last year and August this year? How did the temperature compare? A. All the way thru?

Q. Yes. A. We had the analysis before us there.

Q. And the analysis would indicate that more riding would have been expected last year than this year, wouldn't it? You had clearer weather and hotter weather last year? A. Yes, with worse weather this year than last year, we certainly ought to offset the riding last year, but when we still went back it would look

to me to accenuate the fact that business was going backward.

Q. But wouldn't it be natural that you would have better riding in a month that has better weather conditions? A. Last year, yes.

Q. You don't think the fall-off in week-end riding shown in that exhibit has any effect on the fare at all? A. I don't think so, it's the automobile.

Q. Let's take Exhibit No. 4. Doesn't that show that August receipts were closer to July receipts this year than they were last year? A. Yes, that was very easily explained; the fact that the Saturdays and Sundays come in there. It just switches it around, July having had five Saturdays and five Sundays this year, and August having had only four Sundays and four Saturdays, as against last year would be a different comparison.

Q. How much difference would you think that would make in dollars? A. That would make quite a difference in dollars.

Q. Do you think it would account for that total difference that is shown there? A. The $99,000.

Q. Yes, sir. A. No, sir.

Q. It couldn't possibly account for that, could it? A. No, of course not. The fall-off in riding accounts for the rest of it.

Q. Does that indicate a fall-off in riding when August is closer to July this year than it was last year? A. Excepting the conditions of the earnings, and the Saturdays all came in to upset the analysis, I would have to go thru that very carefully to give a definite answer, Mr. Tingley.

Q. But you don't see anything offhand that would account for that total difference? A. Except the Saturdays and Sundays would offset to an extent of somewhere between 30 and 50 thousand dollars, likely.

Q. And that would leave 50 thousand more to be accounted for, wouldn't it? A. It might be weather conditions, it might be things that attract people, different entertainments, concerts in the parks and so on.

Q. Doesn't that exhibit indicate if anything indicates that August has turned the corner for a better showing? A. No, I don't think so at all.

Q. Let's take Exhibit No. 5. A. Yes.

Q. Doesn't that chart show that the low and average lines both trend up in the latter part of the year? A. Yes, that's always so.

Q. And in the case of both of them the turning point seems to be August? A. Yes, that's true.

Q. Is it reasonable to expect that the last six months of 1927 will continue on the decline shown by the summer months, shown by that exhibit? A. It would be possible to be some slight up-grade, but it would have to be a good deal to bring us out anywhere near right.

Q. Isn't the net income for the last six months of the year always higher than that for the first six months of the year? A. I think it generally is, yes. As against that we have some extra expense to consider that would make out net for the last six months, less than the net for the first six months of the year.

Q. Now taking Exhibit No. 6. Do you think the failure to earn a fair return on investment is grounds for emergency relief? A. Having been so continuous and so long, I think it is at the present time.

Q. Under what language of the Maryland Statute, of Chapter 335 of the Acts of 1927, would you say that was true, Mr. Emmons? A. I am not a lawyer. I don't know anything about the acts in that way.

Q. This shows that the rate of return received on an adjusted $70,000,000 valuation is as follows:

1920 6.074%?

A. That's what it reads, yes, sir.

Q. That's more than 6%? A. Very slightly.

Q. For 1921, 5.546? A. 5.546.

Q. 1922, 5.870? A. Right.

Q. 1923, 5.975? A. Right.

Q. 1924, 5.927? A. Right.

Q. 1925, 6.004? A. Right.

Q. Over 6%? A. Very infinetesimal.

Q. 1926, 5.912? A. Right.

Q. Now, Mr. Emmons, an increase to a ten cent fare would mean a 2.4c increase in the average fare received by the company, wouldn't it? A. Yes.

Q. And on the number of car riders, for 1926 that would mean about $5,000,000 increase in receipts, wouldn't it? A. Well, then to get into that we have got to get into the question of depreciation.

Q. Taking that up afterwards? A. And Park Tax.

Q. First answering that question? A. It wouldn't mean that much. You have taken the total passengers of '26. You will have to reduce that in the first place by at least 4% for present falling off.

Q. I mean taking the passengers as they are in 1926, without reduction? A. But that would not be a fact.

Q. But you don't know whether you will in 1928, or not? A. We don't expect to.

Q. But you don't know? A. No.

Q. It's just a guess? A. The difficulty in the guessing here is, has always been, we have guessed too optimistic.

Q. But for August and July you have guessed too pessimistic? A. No, it doesn't show that.

Q. Would an increase to ten cents on the number of car riders you had in 1926, without reduction mean $5,000,000 increase in receipts? A. That would be true, but I don't think it would ever be a fact.

Q. Now if 20% were taken off for taxes, it would still mean a $4,000,000 increase? A. I think your assumption in the first place, Mr. Tingley, is entirely wrong.

Q. But assuming, it's up to us to substantiate our assumption of course, but assuming that that is correct.

(Mr. Howard) Your assumption is that if you had had the increase in '26, is that it?

(Mr. Tingley) Yes, sir.

(Mr. Howard) Supposing we had gotten it January 1, 1926?

(Mr. Tingley) Yes, sir.

Q. (By Mr. Tingley) Now, in 1926, the Company had $4,307,000.00 available for return on its investment? A. $4,289,000.00.

Q. Yes, sir. Wit a ten cent fare, it would have had over $8,000,000 available for return on its investment, wouldn't it? A. No, because if we had that we would begin to do what we should do; we would begin to set up a proper depreciation reserve. Part of that goes to the Park Tax. We would begin to pay proper wages to the men. We would begin to give different service.

Q. Would you raise the wages of your men before you gave different service? A. We might change it the other way.

Q. Assuming that you didn't do any of those things, you would have had an income of eight million dollars available for return on investment, wouldn't you? A. If you want to assume a thing that's perfectly illogical, yes.

Q. I want to assume it for the purpose of this argument, whether it's logical or illogical. That would be 11½% on 70 million dollars, wouldn't it? A. Yes, sir, that seems to be right.

Q. And 11% on 75 million dollars. A. Yes.

Q. What, in this exhibit, indicates that that won't be the situation in 1928? A. There is nothing in this exhibit that shows that at all.

Q. What is there that indicates in all these exhibits that there is a different result? A. A lot of difference.

Q. What, for instance? A. Any person with any reasoning at all knows that 5% on our gross revenue is an

inadequate depreciation reserve, is an absolutely inadequate reserve.

Q. You have gotten along with it for a long time? A. We have skimped along on it. We have let depreciation accumulate to such an extent that we are in great need of an adequate depreciation reserve and must have it. With our present depreciation reserve that would mean a life of all our property of 75 years and no person would say that that would happen.

Q. It is the ultimate aim of the Company to secure a full fair return on its investment? A. I don't think that when we get into the real case and show the needs of depreciation and other items it will give us a full fair return on 10 cents.

Q. But is it your ultimate aim to get a full fair return? A. No, not in that sense.

Q. Would the ten cent fare in your opinion give you a full fair return? A. No, I think it will not.

Q. Have you any ultimate intention of attempting to exceed the ten cent fare? A. No, sir.

Q. What do you consider the full value of street railway transportation worth to the public? A. I think today, as compared to 15 years ago, it certainly is worth ten cents. The costs are more than they were at that time.

Q. What do you consider the fair value of street railway service to the user of the service? The limit of value?

(Mr. Howard): Isn't the answer obviously that? It's cost plus fair return.

(Mr. Tingley): No, I don't think so. I think the Supreme Court has held that it is not, Mr. Howard, and I think you know it. I can refer you to Mr. Markell's brief in case No. 1915 on that, Mr. Howard.

(The Witness): Mr. Tingley, to answer your question, I do feel that a ten cent cost to rider certainly should not be the limit as to any length of ride. When we get

beyond that we have got to begin to equalize the length of riding to some extent.

Q. Isn't it true that the only reason that the Company didn't apply long ago for a rate increase is that it apprehended that the increase might not mean an increase in revenue? A. It is not so.

Q. Why is it true that the Company has patiently undergone seven years of confiscation? A. The real trouble of the present conditions is that I promised to this Commission that I would try to work our way out on a 8-7½c fare, and I have tried entirely too long in my judgment.

Q. And that promise has gone by the board? A. It certainly has been by it long ago. We have gone by it three years now.

Q. Didn't Mr. France state in the 1924 case that the valuation would justify a fare that the Company couldn't hope to collect? A. I don't remember that he did.

Q. Mr. Emmons, do you think it's fair to adjust a valuation backwards, from the date of valuation to previous years? In other words, if you have a valuation made by the Commission on January 1, 1925, do you think it's fair to adjust that back to a valuation for January 1, 1920, by simply subtracting the improvements and betterments that were made in those five years? A. We felt that was the only fair way to do it.

Q. Do you think that gives you an accurate valuation as of the earlier date? A. I think this; that were the actual value determined in those years, at which times many things were higher than now, the valuation might have been made, yes.

Q. That's a hit or miss way of getting at it? A. No, we feel that is the nearest way you can get at it.

Q. It couldn't in any sense be called an exact way? A. As exact as you can. Certainly if you can build up your valuation in that way, and it's fair and I think we will all say that it is, then the converse must be true. You can deduct from your valuation in a similar manner.

(Mr. Howard): You couldn't carry it back to 1913, that way, could you?

(Mr. Tingley): No, I was thinking about that. Suppose you took the valuation made in the case of the Telephone Company and tried to carry it forward in the 1916 valuation that way. You would get a wide discrepancey.

(Mr. Markell): If you didn't strike abnormal periods. That's easy enough.

Q. What does the 1926 debit of $111,776.95 include as shown on your exhibit?

(Mr. Howard): This is in exhibit No. 6?

(Mr. Tingley): Exhibit No. 6, third sheet.

A. Oh, that was largely due to the auditing of the books by Haskins & Sells, and the charging to profit and loss account of $100,000.00 due to destruction of cars, which they otherwise set up to the extent of $900,000.00.

Q. Was the permission of the Public Service Commission ever gotten for that? A. Not that I know of. But that's a case of property not used. These cars were admittedly unfit for use in the valuation; are not included in the valuation, but still were in the road and equipment account.

Q. Do you know that the rules of the Commission require that the consent of the Commission be obtained before that transfer is made? A. No, that's new to me. I apologize to the Commission.

Q. Taking Exhibit No. 7, Mr. Emmons, why do you estimate an additional decrease in revenue of 2% after September 15th. A. That was just because we assumed that there might be, with all the agitation that there has been in the various papers, it was assumed that there might be a temporary loss at least of some riders, due to the increase in fare.

Q. Do you think there is a considerable amount of falling off due to the application of the ten cent fare on the part of the public. A. There is no doubt about that.

Q. You thought that it had not affected August riding in any way? A. I don't think it has.

Q. But you think it will affect riding in the remainder of the year to the effect of 2%?

(Mr. Howard): That is if the increase is granted.

(Mr. Tingley): That's right.

(The Witness): I remember when the seven and a half cent fare went in, through the leadership of some people here, they put out posters, "Ride with me," and all that, and it carried for a few weeks, and it had a temporary effect.

Q. On what experience was the 2% figure gotten? A. It was not experience, it was simply a guess.

Q. It might as well be one or six? A. It might as well be one or the other.

Q. Ten cents was the fare that was estimated as the fare effective September 15th? A. Yes, sir.

Q. Is that the fare that the company thinks that the emergency requires? A. That's the fare we feel is necessary to bring this year out to the basis as a whole to give us the credit that we should have.

Q. What is the emergency fare that you want? A. Ten cents.

Q. Ten cents? A. Yes, sir.

Q. Well then was Mr. Markell mistaken when he said in his opening statement that you only wanted part of the whole in this emergency case? A. We are asking for no change in any other thing but the ten cents. In the other case I think we will have to consider the question of commutation, the question of overlaps and a great many other things.

Q. So that this emergency application is for an immediate ten cent fare with an increase of only one cent in the half fare, that's correct isn't it? A. That's correct.

Q. And no change in the commutation rate? A. No.

Q. And the permanent fare involves a ten cent fare and a probable further increase in the half fare and an increase in the commutation rates? A. No, I haven't in mind any increase in the half fare. We do feel there should be some thought and study given to the commutation rates with an increase in the present commutation rate which would be in line with the increased rate of fare.

Q. So when Mr. Markell says that the company only wants a part of what it would ask in the permanent rate case, in order to get what it was entitled to, what he meant was he wanted ten cents now, but more later? A. Ten cents on the cash fare now and then an adjustment of these other things as we go through the real case.

Q. I see.

EXAMINATION SUSPENDED.

NOTE: The Commission then adjourned for the purpose of taking a recess.

AFTER RECESS.

Thereupon:

C. D. EMMONS,

a witness of lawful age produced on behalf of the Applicant, having heretofore been duly sworn according to law and whose examination was suspended for the purpose of taking recess, resumed the stand, was examined and testified as follows:

(Mr. Howard): With Mr. Tingley's permission, Mr. Emmons referred to an exhibit that we didn't have sufficient copies to file when he was under direct examination before recess, and we have these now, and if Mr. Tingley will suspend his cross examination a moment I will have that filed.

Mr. Emmons, you referred in your direct examination to a calculation which you have had prepared to show I believe what would have been the result for the year 1926 if fares had been reduced for that year to four tickets for a quarter and if it had resulted in an increase of business sufficient to raise your gross receipts for the same amount. Have you that exhibit here now?

(The Witness): Yes, sir.

(Mr. Howard): Will you file it with the stenographer as exhibit No. 19.

NOTE: Statement above referred to is here filed in evidence and marked Applicant's Exhibit No. 19.

(Mr. Howard): You might devote just a word or two to explaining it.

(The Witness): This exhibit was to show what would be the estimated revenue passengers, operating expenses and net income for the year 1926 on the basis of four tokens for twenty-five cents in place of two tokens for fifteen cents, and on the hypothesis that the increase in revenue passengers would be adequate to maintain gross receipts at the same level, the result of the figuring being that using seven revenue passengers, assuming seven revenue passengers as the proper leading standard. In the first place the result of the computation is that you get the same revenue that we get now.

(Mr. Howard): That's the hypothesis.

(The Witness): Yes. It would require forty million five hundred and forty-eight thousand five hundred and thirty-seven more revenue passengers or 18% increase. Then with that number of revenue passengers and on the basis of seven revenue passengers per car miles as the proper loading standard, the car miles needed would be 265,804,170, the car miles needed to carry those 265,804,170 revenue passengers would be 37,972,024 car miles, or an increase over 1926 car miles of 2,267,441.

The revenue passengers carried per car mile in the year 1926 were 6.4, so that really gives us quite a lot less car miles than we would have if we used the revenue passengers per car mile for the actual year. The result of this is, in giving the actual cost of the operation for per car mile operations that instead of $1,010,000.00 net income we would have had $436,738.00.

(Mr. Howard): So, in other words, what that exhibit shows is if such a reduction in fare had resulted in increasing riding of 18%, enough to bring your gross rev-

enues up to the same, you still would have had a net of only $436,738.00 instead of one million and odd which you did have? A. That's correct, yes, sir.

(Mr. Howard): That's all.

Cross examination continued by Mr. Tingley:

Q. Just taking this last exhibit first, so we can dispose of this exhibit No. 19? A. Yes.

Q. Do you attach any significance to this in the present case as an emergency? A. Just as a curiosity to see how many more people you have to have ride to make the difference.

Q. Mr. Emmons, did the Company have in mind at the time the petition in this case was filed the fact that it wanted ten cents as an emergency fare? A. We had in mind that we needed ten cents as a permanent fare and it would require ten cents in order to bring this present year out with a net income that would be at all to our credit.

Q. Did the company have in mind the fact that it intended to apply for an increase in commutation rates in the permanent fare case? A. Not specifically, other than pointing out to the Commission rather an inequitable situation, not only the commutation rates but the overlaps. We think both of them should be given consideration, and we expect in the permanent case to lay before the Commission the facts of the commutation rates, their purpose, the extension of the overlaps and the entire story so that the Commission then can make up its own judgment as to whether anything should be done, or whether anything should be done, what should be done.

Q. Just before the Commission recessed at noon, you explained Mr. Markell's statement that the Company was asking for less than it was entitled to in the present case by saying that in the permanent case, application would be made for an increase in commutation rates, is that correct? A. No, I didn't say an increase in commutation rates. I didn't mean to say that. I meant that we would show that the commutation rates then on a ten

cent basis would not be equitable at the present rate of four and a half and five cents.

Q. Is that the explanation of Mr. Markell's statement that the company in the emergency case is only asking for part of what it is entitled to in the permanent case? A. I think Mr. Markell's statement is merely this; we expect to show the facts and our needs here. I have shown an exhibit that it will take ten cents with no change in the commutation or school ticket, with a change to five cents for the half fare, it will take ten cents to make this year come up and give us a credit position. Now what we are here to do is to give the Commission the facts and ask the Commission to do the best they can for us.

(Commissioner Harper): Are you asking for a fare that will make up all past deficiencies?

(The Witness): Not all past, no. I am asking for a fare that will help out this year, and one reason for an emergency fare is that after the day is gone that you can get the fare you cannot collect the back fare. We have failed to meet our needs for years and years and every day means that much worse. Now we put in this exhibit to show that a ten cent fare from September 15th on would give us less than a million and a half dollars net, and we feel we need that for the purpose of credit. Of course if we can't get the ten cents, we will not have that result.

Q. Mr. Emmons, does the company intend to take the position in the permanent rate case that commutation rates ought to be increased to make the situation equitable? A. I think figures will show that slightly necessary. We haven't figured that out yet. I am unable to state definitely that that will be our position.

Q. Now I refer you for a moment to a pamphlet entitled "Ask Me Another About the Carfare." "Twenty Questions and Answers to the Facts You Should Know to Understand the Street Car Situation in Baltimore." United Railways & Electric Company of Baltimore, August, 1927." That was issued by the company, wasn't it? A. Yes.

Q. Question 17, "Will Commuters Who Now Use The

Commutation Books Have to Pay The Increased Fare?" "A. No. Commutation Rates Will Remain as they are at present."

Will that be the position of the company in the permanent rate case? A. I think not.

Q. Was that a misstatement then? A. Not at the present time, no. It's not a misstatement for the temporary case.

Q. But it is a misstatement as applied to the permanent case? A. We expect to show the Commission the facts, of the length of ride, the use of commutation tickets, the rate of commutation tickets, and the abuse of commutation tickets, the same as we expect to show the abuse of overlaps.

Q. Were the questions and answers framed in that way, so as to hold opposition on the part of suburbanites in the increase to the temporary fare? A. No, I don't think it had any consideration of that at all. That was the answer as of the present time.

Q. It's an entirely definite statement? A. It is, yes.

Q. Then so far as the petition is concerned the words, "immediate substantial increase" and the words "ten cents" means the same thing in the opinion of the company? A. That is as far as our needs, and we want to show the Commission our needs, and of course the Commission will make their decision as they deem best and proper.

Q. Referring for a moment to a newspaper full page advertisement entitled "A Frank statement to the public about the carfare emergency," that was authorized by the company? A. Yes.

Q. "No change is asked in commutation rates for suburban riders. They will stand for the present." A. It says the carfare emergency and they will stand for the present. That is right.

Q. And you would call that a definite statement? A. That's right, yes. That has entire reference to the emergency question.

Q. Does it state that it has? A. It says so. You read it yourself; in the beginning.

Q. Does it state that it has no application to the ten cent fare case? A. You read the first article in regard to that emergency case.

Q. Did it say that it had no reference to the ten cent car fare case? A. Not specifically, no, but it states just what it does.

Q. This Exhibit No. 7 shows a decrease in operating expenses of 2% of the last five months, doesn't it? A. We so figure it, yes.

Q. In the original draft of the exhibit, which was submitted no decrease was shown, was there? A. No, because we were taking a decrease anyway and absorbing the 2% increase to the men, and in refiguring this, I said we better figure that we will make further decreases and figure an additional 2%.

Now you understand if we keep the same figures as last year, we are absorbing the 2% increase, to our employees so we then took——

Q. That's a voluntary increase, isn't it? A. That's a voluntary increase, yes.

Q. There is no emergency effecting that? A. Not as far as that is concerned, no.

(Mr. Markell) That's already in force?

(The Witness) That's already in force.

Q. I was talking about further increases? A. The one already in force is what I meant. If we make the operating expenses for the last six months of this year, the same as the operating expenses, for the last six months of last year, we would then be absorbing in the operating expenses this year, the 2% already given, and then we put an additional 2%, so we would feel we were at least figuring conservatively in this.

Q. Why should you estimate only a 2% decrease when there is a 4% decrease in revenues estimated? A. Because it's been our experience if you make any per cnt.

decrease in revenue the best you can do is to cut your operating expenses about half.

Q. About half? A. Yes.

Q. An increase in cost under the power contract, is shown as $120,000, is that correct? A. Yes.

Q. On the original draft of the exhibit it was shown as $80,000? A. Yes.

Since we made the original draft we have gotten figures from the Gas Company that make this $120,000, and under certain conditions it might be $130,000. I used the 120.

Q. That isn't payable during the year, is it? A. It would be payable at once. As we go thru, but the figures have not yet been finally determined, but that is the Gas Company's set up and our own engineers are working at that at the present time.

Q. When do you estimate that that will be payable? A. It's due, part of it is due already, that is if this stands, and I am afraid it will, because I once before went thru an arbitration to offset a charge very much like this and got beat on it and if this stands, then eight months of it is already due.

Q. The first seven months show $34,000 was charged for income taxes, or was estimated for income taxes for that period? A. That's what it shows, yes.

Q. And you estimate $21,642.00 for that purpose for the entire year? A. Yes.

Q. And then oughtn't there to be a credit to income for July? A. Well we have taken credit in the last five months off of the total.

Q. But you didn't figure it for July? A. No.

Q. Instead you charged July with $5,000.00. A. Yes, that's what we started to set up before we knew we were going to go so badly.

Q. If that $34,000 estimate is correct, that would indicate a net income of $800,000 for the year? A. On that

basis, yes. We started the year out hoping that it would be correct, and therefore we set up that amount.

Q. Now your estimated decrease in passenger revenue for the past five months is 4% and that's taken from Ex. No. 1 isn't it? A. And our later experience, as I told you this morning, I am fearful that it will not be enough.

Q. It's based primarily on Ex. No. 1, isn't it? A. And the other exhibits.

Q. 4% was put in this exhibit at the time, that exhibit was originally prepared and before August and September figures were in? A. It's from that and our later experience.

Q. And if that figure of 4% is correct, of course the entire exhibit would be effected? A. In a way. I think it's too low. You perhaps think it's too high, so it's a question of judgment there.

Q. Now the exhibit shows an increase in income of $1,000,000 for three and a half months, if the increase is granted, doesn't it? A. Practically so, yes.

Q. And at that rate what would it be for a full year period? A. But that has not taken into consideration these other items.

Q. I understand that. A. Well, four times the million is four million, sure.

(Mr. Markell) It's three and a half months.

(The Witness) Well, three and a half. I see no connection with that myself.

Q. Take Ex. No. 8, Mr. Emmons? A. Yes.

Q. Do you understand that the Commission guaranteed or assured the Company of a net income of $1,182,142.00 for 1924? A. I do not.

Q. Do you think the failure to obtain a net income from the Commission constitutes grounds for an emergency relief? A. No, but it shows a failure to properly estimate, or being over-optimistic as to results.

Q. In this exhibit also the 1927 shortage is based on a

decline of 4% in passenger revenue for the second six months? A. Yes.

Q. So if that is erroneous the exhibit would be affected to that extent? A. Either way. If that percentage is greater it will be less, if that percentage is less, it will be greater.

Q. Now the first draft of the exhibit showed a shortage in 1927 of $734,248.00, didn't it? A. Yes, a difference of $41,000. there.

Q. And this present exhibit shows $693,142? A. Yes, that's a change in refiguring on the 2% decrease in operating expenses, makes a difference of $41,000 in the net income and also a difference of $41,000 in that difference.

Q. Now taking Ex. No. 9? A. Yes.

Q. I assume that your answer would be the same as to this exhibit; that you don't understand that the Commission guaranteed or assured to the Company a net income of a million or a million five? A. The Commission so said in their opinion.

Q. The Commission said in the 1919 case.

"But in fixing $1,000,000 as the minimum balance to surplus which the Company should be permitted to earn under existing conditions, this Commission is not to be understood as undertaking to guarantee such fund to surplus at the expense of the public at any and all hazards."

Mr. Emmons, do you think that shortage from the net return estimate of a Commission is ground for emergency relief? A. Continuous shortage and the rapidly falling off of passengers at the present time, I think is. Just the falling off of the shortage is not in itself ground, but other conditions make it a part of the ground.

Q. Now the exhibit shows that for 1923 the shortage was only $23,734, wasn't it? A. Yes, sir.

Q. Shortage from a million? A. Shortage from a million, yes.

Q. For 1924, it was only $32,032? A. Yes.

Q. For 1925, $19,390? A. Yes.

Q. For 1926, it exceeded the million by $10,054? A. Yes.

Q. Now taking Exhibit No. 10? A. Yes.

Q. Your position as to that, I assume is the same? That the Company was not guaranteed by the Commission a gross income of one and one-third times its fixed charges? A. Yes.

Q. What was the percentage of shortage below the one and one-third times fixed charges for the period from 1920 to 1926 as shown by the exhibit? A. The percentage less? About five per cent.

Q. And as to this exhibit also, your position would be that failure to earn a gross income in the ratio estimated by the Commission is not a basis for emergency relief? A. One of the reasons. I say not in itself, not in and of itself.

Q. Now Ex. No. 11 we will skip, because that is a check of our exhibits, and I would sooner take it up in our direct testimony. Take Ex. No. 12? A. Yes.

Q. This exhibit is designed to show a decrease in short haul and an increase in long haul business, isn't it? A. Yes, sir.

Q. Actually it doesn't conclusively establish that, does it? Because of the number of short line riders who ride on most of the lines taken as long haul lines? A. You couldn't separate those. These have to be in themselves the ones that originate on these lines. Of course. If they take a transfer and make a long line haul afterwards, that wouldn't be separated.

Q. You think that the decrease in riding is due largely to automobiles? A. I do, yes.

Q. And do you think that automobile competition effects long haul riding more than it does short haul riding, but that there is more long haul riding and therefore the long haul figures increased while the short haul figures

decreased? A. That is, there is a great increase in long haul riding and there is an actual decrease in the people in the short haul district.

Q. You don't think that this exhibit indicates an increase in walking on the part of short haul riders? A. I do not.

Q. If there is such an increase in walking on the part of short haul riders, would an increased fare improve the situation? A. I don't think it would have any material affect.

(Mr. Howard) Which, the increased fare?

(Mr. Tingley) Either.

By Mr. Tingley:

Q. Do you think that this exhibit indicates that the problem that the Company faces is that of attracting short haul patronage again? A. No, I do not. I think this would be the same result were the fare even less. I think that is susceptible of proof thru the figures of Brooklyn and San Francisco, both five-cent cities, due to their arrangement with the city and they show the same kind of a decrease in revenue passengers that we do. I haven't a division between short and long haul passengers, but the rate of fare doesn't seem to have made any difference in the decrease in cities on the five-cent basis, or seven and a half or ten-cent basis.

(The Chairman) Mr. Emmons, sometime ago you read a statement from a paper you had before you, a page with a lot of red dashes marked on it, indicating cities, I believe.

(The Witness) Yes.

(The Chairman) Will you tell me what year that was for?

(The Witness) That was a comparison for the month of June this year.

(The Chairman) That showed that the riding had fallen off materially in all of those cities?

(The Witness) Yes, sir.

(The Chairman) And in Baltimore it had fallen considerably less than in some other cities?

(The Witness) That's right, yes. And more than some other cities?

(The Chairman) Yes. The point I was after was to find the time that that represents.

(The Witness) It was June of this year.

(Commissioner Harper) I believe you said, Mr. Emmons, referring to that same exhibit that Pittsburgh showed a less falling off than most of the cities, and that's a city where the weekly pass is in effect.

(The Witness) Their statement gives credit for 18 rides per weekly pass. Pittsburgh is 1.26 falling off, but there was Chicago surface lines with only .24%, and Brooklyn on 1.24%.

(Commissioner Harper) What was Pittsburgh's falling off in comparison with Baltimore.

(The Witness) Pittsburgh was 1.26, Baltimore 3.24.

Q. What's the fare on the Chicago surface lines, Mr. Emmons? A. Seven cents.

(Commissioner Harper) Have you considered whether or not, in asking for some emergency relief that it might be possible to remedy the condition by trying out a weekly pass?

(The Witness) We have considered it, Senator, but we think that the question of it is entirely too much of a gamble.

Q. Isn't the increased fare a gamble, Mr. Emmons? A. We do not think so. We think that these figures, as I read you this morning, shows an increased fare brings a direct increased result as to revenue.

Q. Don't statistics show the same thing as to weekly passes? A. No, it does not. I gave you Pittsburgh weekly pass, which doesn't look to me that it's done anything remarkable. Here is what happened. In the year 1926 over 25 they had a decrease of revenue passengers of 1,581,435, and that is giving the weekly pass credit

for eighteen rides. During the same period we had an increase of 1,020,106 without the weekly pass. They had to, because of the weekly pass, increase their car miles, 1,695,000 we were able to decrease our car miles 418,000. They had a loss in gross of $113,000.00, we had an increase of gross of $79,000,00, so it doesn't look to me as if the weekly pass has done Pittsburgh any material good.

Q. How about Norfolk? A. I gave Norfolk for last month. Norfolk during the year 1927 to date, the first seven months as against 1926, shows an increase in gross passengers of 3.8%, an increase in passenger revenue of 10 per cent.

Q. To spite an increased fare? A. To spite an increased fare.

Q. Mr. Emmons, haven't most cities which proposed such a radical increase in fare as a two and a half cent increase, to ten cents, given the public the benefit of some such gamble as you call it as a five cent Sunday ride or the weekly pass? A. Boston did not. Boston went to straight ten cent fare.

Q. That was done under your administration there, wasn't it? A. It was, yes.

(Commissioner Harper) Mr. Emmons, when you face such an emergency, do you think it justifies the granting of a substantial increase in fare? That increase necessarily falls heavier on the short rider. Wouldn't it be equitable to try to adopt some plan to give the short rider a chance to get equitable fare and at the same time increase the long riding.

(The Witness) That, Senator, must get into the zone system, because you couldn't give the short line rider.

(Commissioner Harper) I am still talking about the weekly pass.

(The Witness) But the long line rider would have just as much right to use the weekly pass as the short line rider, and a man might originate on a short line and be one of the longest riders we have.

Q. You could differentiate, could you not? A. Not very well.

Q. Why not? A. Then you would have to get into a zone schedule of some kind.

Q. Only as to the pass? A. I don't see how you could possibly do it.

Q. You would only recognize the pass when it got past a given point? A. I don't think it could be worked out.

(Mr. Markell) It's as hard to work out as the gasoline refund in Baltimore. Nobody can use it.

Q. It's done in other cities. A. Not a limitation of the weekly pass as you are proposing it.

Q. Are you sure of that? A. I don't know of it.

Q. There has been some? A. Not that I know of it being limited.

Q. At least they are reported in public utility reports.

(Mr. Howard) You mean zones for the weekly pass and nothing else.

(Mr. Tingley) Yes.

(Commissioner Harper) What I had in mind is there are a great number of riders who must ride the cars. It's a case of necessity with them.

(The Witness) Yes.

(Commissioner Harper) And if you feel that there must be an increased fare oughtn't those people who have to ride be given an opportunity to get an equitable rate?

(The Witness) The difficulty is giving them a rate that will give a return that is necessary. I would only be too glad, Senator, if we had a sufficient leaway to try out a lot of these things, but we haven't and the fact is that after they start with a weekly pass, a man from Stone & Webster was telling me that they started out in a town with 30% of the riders taking the weekly pass; it finally got down to 20% and the only ones that used it were those that actually saved money by its use.

Terre Haute, Indiana, a weekly pass town, have finally given it up, because they found it had been abused. They found the number of users had diminished one-half, and

from the information I have heard it is apparently very much of a problem yet.

Here is a report, Bulletin No. 85 from the American Railways Association that in a summary it gives this as of June 1, 1926. Sixty-five cities now using the weekly pass. There are twenty-four cities had used it and had discontinued it. There are five now using the monthly identification card; seven that had used it and had discontinued it. There are seven using the Sunday and holiday pass, two had discontinued that. So you can see that the ones that had tried it have given it up.

Q. How is Mr. Feustel's Company coming out? A. Mr. Feustel's Company is in a very small town with an entirely one-man car operation. I happened to be in that town myself from 1903 to 1911, and the pass works greatly to his advantage, because of the one-man car operation, but his percentage of pass users is not great, but it really sounds good over there.

Q. It has worked out successfully there, hasn't it? A. He thinks so, yes.

(Commissioner Harper) You made a concession in the case of schools sometime past?

(The Witness) Very much so, yes.

(Commissioner Harper) Here is a case where you propose to put a flat increase on everybody?

(The Witness) But the school tickets.

(Commissioner Harper) Now ought not the regular rider, the fellow that has to ride twice a day at least, have some consideration, as opposed to the occasional rider?

(The Witness) Senator, if the gross receipts could work out enough to give us what we need I wouldn't mind and I would be delighted if they could ride for five cents, but the fact is that we have taken a figure like Mr. Maltbie took in the valuation case, if you will remember, we have taken the riders of last year at five cents, we have taken the car miles of last year, with the 1913 cost of operation, and we would have $6,000,000 of gross income instead of $4,000,000. If that situation could just be brought back to us, but the point is that we are more than

double in our own costs, and we have to find some method, some scheme to meet that. If we had plenty of leeway we would be only too glad to try those things out.

(Commissioner Harper) Pittsburgh don't seem to have suffered from the experiment.

(The Witness) I don't think they are happy about it.

Q. Isn't the difference between the weekly pass and the increase in fare to ten cents, the fact that the weekly pass gives the public a chance to co-operate with the Company, gives them a chance on a gamble? A. On weekly passes and so on, I am very much taken with the new form of what they call the nickel identification card, because that makes every person at least no matter how many times they ride pay a nickel. but that again is subject to abuse and makes a real decrease in earnings and it's only the person who really saves considerable by it that uses it. I don't know whether you understand the system or not, but it's on this basis.

Q. Suppose you do explain that in the record? A. That if you have a ten cent flat fare, you say that that man paying 10 cents can ride only 12 times during the week on your peak hour. Consequently he ought to pay you $1.20. Now we will give him a card that will give him a five cent ride, five times 12 would be 60 and we charge him 60 cents for this identificaton card. Consequently when he rides to work he pays a nickel, and every time he rides to work and back he pays a nickel. Now as long as he had ridden his twelve times, morning and evening, for the six days a week, he has paid his full rate of fare. Now if he wants to go out at night, to go to the movies, he pays a nickel and he gets all those other rides for five cents, but they must be off the peak hour.

Q. Is the Company willing to try that, Mr. Emmons? A. I am fearful of anything in our real emergency. I really feel we have got to get ourselves above water and then I would be willing to try anything like that, but we are so far below water that I am afraid to try anything that will materially cut into earnings.

Q. If any increase in rate whatsoever is granted, will you be willing to try it? A. I would not say that. If

there is a substantial increase, I wouldn't be afraid to try it for a little while, but I would want a very definite trial.

Q. What would you call a little while?? A. I think a trial of two or three months might find it out, but it would have to be on an increase that would warrant a trial.

Q. Now getting back to Ex. No. 13? A. Yes.

Q. That shows a loss of 3% on lines other than zone extension lines, doesn't it? A. Yes.

Q. What do you attribute that loss to? A. That was the same economic loss that we are suffering today. That's the reason I didn't read the finish of this the other day, Mr. Tingley. My voice had about given out and I thought it was evident. In order to adjust the zone extension loss as accurate as we could we said we would have to take out of those losses, the average loss of the other lines which is 3%.

Q. And that average loss you think is caused almost entirely by— A. I think that has got all of the late losses.

Q. Taking Ex. No. 14? A. Yes.

Q. That shows that the power service charge is higher in 1926 than in 1923, doesn't it? A. Yes, sir.

Q. What is the reason for that? A. 1923, we had the benefit of the original power contract, up until February 7, 1926. In 1911 perhaps you will remember there was a contract made with the Pennsylvania Water and Power Company by which our Company was entitled to 133,000,000 kilowatts of power at practically one-third cents. When we made the contract with the Gas Company we said we want to hold that right and we had that entitlement included in our contract until February 1, 1926, after which we lost it and had to lose that much power at a very cheap price.

Q. The contract of Feb. 1926 was not designed to affect a saving in power charge then? A. You mean the Feb. 1, 1921?

Q. No, the one in 1926? A. The contract that was made

with the Gas Company in 1921, in 1920 rather had to be made in two parts, one that gave us the advantage of that original fifteen year contract and then later it gave us power at cost plus 10%, which is very much cheaper than we could make it ourselves. It puts our load with theirs and is a much cheaper operation than if we had to have a power house of our own. We figure it would cost us half a million dollars more if he had to make power ourself.

Q. What is your increase in general and miscellaneous expenses due to in the exhibit? A. Part of that is due to group insurance that we have and other items of increase. I can give you the items.

Q. I wish you would. A. That's the increase of $95,000.00, General and Miscellaneous from 1923 to 26.

Q. The exhibit shows a net increase of operating expenses of $168,402.37, doesn't it? A. It does, yes.

Q. And that to spite the fact that less passengers were carried and less cars per mile operated? A. Yes.

Q. Is that the economies? A. It doesn't look like it on the face of it, but if we hadn't had economies in that increase would have been more.

Q. The only savings that are yours are in maintenance and taxes, aren't they? A. Maintenance and taxes.

Q. Do you think that maintenance was saved to the expense of the property? A. I wouldn't say yes to that. I would say it might be just deferred in this way. I still feel that we have our property in a good physical condition. We know, however, that we have today sixty miles of tracks that is over twenty years old, we know also that you probably can go out and find twenty miles of track subject to criticism that should come out.

Q. The tax decrease is due to a decrease in the rate of tax, isn't it? A. Partly that and partly a decrease in park tax, I think.

Q. That wasn't achieved through any effort on the part of the company? A. Not the rate of tax, no.

Q. Neither the park tax? A. Neither the park tax, no.

Q. Taking Exhibits 15 and 16, Mr. Emmons? A. Yes.

Q. Do you consider that the wage situation constitutes an emergency? A. I do not.

Q. When was the present arrangement that now obtains with the men as to wages made? A. Last December.

Q. What was that arrangement? A. That arrangement was that they should receive 1c an hour additional over the wages paid in 1926 for 1927, and an additional cent an hour for the year 1928. That was reached after a very long and rather hard conference on the basis that the men came in there almost to a unit to stand pat for three cents for the first year. We showed them it was absolutely impossible; that if they are going to co-operate with the system it was the best we could possibly hope to do, and for that reason, after making that arrangement for one year one cent an hour increase for 1927, and one cent for 1928 we also told them that if circumstances justified, and we had hoped then it might be through the increase of earnings entirely, that we would give them an additional cent making the three cents that they came in asking for.

Q. Was anything said at the conference with the men in December to the effect that if the company got a rate increase it was compelled to ask for a rate increase and a further increase would be granted? A. To go back December a year before that, the men came in at that time requesting more wages. We told them it was impossible to do that, and we felt it was the wrong time to ask for an increase; that we were trying to work the problems out and the men at that time wanted to come to the Public Service Commission to see if they couldn't get an increase in wages. We told them it was all wrong and we wouldn't stand for it at all, and then when it came to the question of asking for the three cents, and if you had been in labor conferences you know the difficulties we have, it was finally adjudicated in that way; that we would give them a cent the first year, a cent the second year, and make up a cent the third year if we could make it out of earnings, and if we had to come for an increase it would be included in that request.

Q. Was the statement made in that conference that the company would get along with the present rate of fare? A. We said we were going to try to work it out. We had promised to do it.

Q. Referring to the trolley news entitled "The Story of Baltimore Street Cars, Chapter 2, Wages of Baltimore Street Carmen," that was issued by the company? A. We have a man in charge of that and it was issued by him. There is some editorial license in that I guess.

Q. I find the statement there? "Baltimore is a city of comparatively low living costs and the wages of street carmen as well as the wages of many other workers have been based upon that fact." That's true, isn't it? A. That's true. That's the reason they have been held down so.

Q. If a graph were made, wouldn't the wage level of the men be shown at about the line showing the cost of living? A. It would, excepting there is one part of the graph that shows that the cost of living was ahead of the men during a certain part.

Q. When was that? A. That was I think 1917, 18 and 19.

Q. Yes. A. But the fact is our men are very keenly alive to the fact that the carmen in other cities get grossly more than they get and also keen alive to the fact that in Wilmington they get 56c and in Washington 58c an hour.

Q. There is also a statement about that in the same issue of the Trolley News: "Baltimore Car-men get a maximum of 53c an hour. The men in Wilmington, Del., get 56c an hour, while those of the Washington, D. C., street cars get 58c an hour. Even so the earning possibilities in Baltimore under its operating conditions are greater than in other cities, even at a higher rate of pay."

That's true, isn't it? A. I don't know that it's true in other cities, but I think what the Editor had in mind there was some cities that would only permit an eight-hour day. Our men work a ten-hour day.

Q. This further statement is made:

"However, even at 53c an hour, the wage rate of Baltimore car-men has increased faster than the cost of living in Baltimore."

That's correct, isn't it? A. That's true.

Q. When a street railway is suffering from a depression that may prove to be temporary do you think it's fairer to cut all salaries, including those of officers, pending the emergency or to ask for an increase in rates for the partial purpose of increasing wages? A. We do not think this is a temporary reduction in income. We think the automobile is here to stay. We don't think it's due to business depression, but to a very little extent.

Q. As an evidence of belief in the existence of an emergency do you think it would be fairer to cut all salaries as the Gas Company did in 1921 before asking for an increase? A. We did that ourselves in '21 or '22. I have forgotten what it was. That was to tide over the places at that time, but this is a permanent thing. That was a real business depression at that time. This is a permanent fixture with us.

Q. Nothing of that sort is contemplated now? A. Not at the present time.

Q. If an emergency exists, don't you think the most stringent economies possible should be effected? A. We think we have, unless you call that an emergency and should be done.

Q. Do you think increase in wages is an economy? A. I think in the end it is, yes; because it keeps your men satisfied. A well trained motorman and conductor is a real asset to your company.

Q. Have you any reason to believe that the men won't cooperate with you if an emergency reduction is refused in the same way that the Company has always co-operated with them? A. I certainly shouldn't want to be the one to ask them to do it.

Q. If an emergency increase is necessary don't you think it ought to be the smallest amount sufficient to tide over the present situation? A. We tried to figure what it is necessary to have for a creditable income for the year.

Q. Turning to Ex. No. 17? A. Yes.

Q. That exhibit shows Baltimore as the 4th city in point of gross income, doesn't it? A. Yes.

Q. And the third in ratio of gross revenue to operating revenue? A. Percent?

Q. Yes. A. Oh, you mean gross income?

Q. Yes. A. Yes.

Q. And that in spite of its being the highest in point of taxes? A. That is right.

Q. The fare is shown as one of the highest, isn't it? The present fare? A. No, our statements show that we are—

Q. Tie for third aren't you? A. Yes, but our average fare as shown on that first exhibit is not the fact that we are one of the highest. This looks like it might be so.

Q. Isn't it true that conditions in different cities make comparisons of this kind almost impossible? A. It's hard to compare, it's rather difficult to compare them, yes.

Q. For instance, take ways and structures, Boston, Cleveland and Washington are shown as being higher than here. Boston has an elevated railway system that makes it more expensive, doesn't it? A. It is expensive, yes.

Q. And the underground wires in Washington would make that city more expensive? A. That's true.

Q. And the Cleveland figures include depreciation, which is higher than that of Baltimore? A. Yes.

Q. The same would be true as to operating ratio, that depends on revenues, doesn't it? A. Yes.

Q. So an increased fare would greatly effect your position in the scale? A. In the per cent of operating, yes. Not in the sense per car mile.

Q. Something was said, I believe by you yesterday to the effect that if an increase was granted, any increase whatsoever, improvement would be made in the service

afforded to the public? What improvement would you make? A. I explained this morning I think that we had to cut schedules where we had over a ten minutes headway between cars, and we felt that should be reduced to at least 10 minutes on all lines.

Q. Is that the only improvement? A. No, we have other things that we would want to make better.

Q. What for instance? A. I haven't the different things but that would depend on traffic studies.

Q. You have no definite program on that? A. No.

Q. Now taking Ex. No. 18. A. Yes.

Q. That shows Baltimore as the sixth among nine large eastern cities, as to the average amount of fare paid, doesn't it? A. That is right.

Q. What would be the position if Baltimore had a ten cent fare in effect? A. It would probably be second in this list.

Q. Boston has some six cent city lines, hasn't it? A. The Boston situation is this. The Boston System runs thru a lot of towns that are small cities in themselves and in that town they have put a small, what we would call a schuttle service of a one man car and charged you six cents, which has been changed to six and a half cents, but it was first put on as a five cent schuttle car, one man car service.

Q. They operate on some streets in Boston, just to a limited extent on that fare? A. They first put them on between the north and south stations, right in the town, thinking that a small schuttle car, at a small rate of fare would pick up a lot of people, but it hardly paid us axle grease.

Q. That fare is not reflected in this computation? A. Oh yes, that's the average receipts divided by the passengers?

Q. What is the average shown as? A. Otherwise Boston would be a flat ten cents.

Q. Boston is shown here as 9.26? A. Yes.

Q. And that reflects that six cent fare? A. Yes, that's right.

Q. There must be a considerable amount of that? A. They have a school children's fare that is also figured in here.

Q. Now the fare has been increased seven to eight cents in St. Louis, effective July 1, 1927, hasn't it? A. I believe it has, yet.

Q. How was the average fare of 7.22 arrived at for St. Louis? A. Given to us by the St. Louis Company.

Q. Why weren't these figures shown either with the taxes in or the taxes out? A. We tried to make them comparable with everything, except as far as the gross receipts tax were concerned.

Q. What would be the effect if all taxes were out? A. I think it would remain a good deal the same, because if you take the gross receipts tax out, the companies do not very much differ, but its the gross receipts tax that would put us first and St. Louis second, because they have a very high gross receipts tax.

Q. Mr. Emmons, taking the list of economies that was testified to yesterday, that has been effective since 1919, don't they consist very largely of curtailment of service? A. It isn't curtailment of service as much as fitting service to the conditions. For instance, the practice of the company used to be, and a great many companies over the country, that when you once start a car out from the car barn it ought to run to the end of the line in each direction. Traffic studies through the Traffic Department began to show that that was an uneconomical thing to do, so we began to fit the car miles to the business. There is a certain point where people begin to drop off the cars, and we began to cut cars back from that point. I wouldn't call that a curtailment of service. I would call it a fitting of service to meet the conditions.

NOTE: The Commission then adjourned for the purpose of taking a short recess.

AFTER SHORT RECESS

CROSS EXAMINATION

(Continued).

By Mr. Tingley:

Q. Whenever a service is cut to any extent at all, even it its only a cutting off of what is regarded as unnecessary service, there is some loss of revenue entailed? A. I wouldn't say so.

Q. Some riding? A. No, I wouldn't think so. Now for instance take the No. 10 line. When the Maryland Casualty went out there we found it quite possible to take care of that increased business by putting in a cross over at 40th Street and turning back cars there, and I wouldn't say that curtailment of service that way loses any business at all, because it is simply——

Q. That rerouting you would think caused some loss of passengers? A. It might have a little bit, but I would say it's very immaterial.

Q. To the extent that that was true, the economies wouldn't be such economies? A. We could find out what the loss was. I suppose the amount that might have been lost should have been deducted, but I think they are immaterial, Mr. Tingley.

Q. The rerouting was an economy instituted by the company, wasn't it? A. No, it was not.

Q. The increase in the advertising contract could hardly be regarded as an economy, could it? A. That was an increased economy due to negotiating a contract which gave us an increase of $44,000.00.

Q. You wouldn't call that an economy, would you? A. It goes in that line. You have an annual saving. It's an increase in income in that way.

Q. The same thing applies to increase in mail pay. A. That was quite a fight to get that, and our friend the deceased Mr. Maltbie had a wonderful hard time to convince the United States Government that we were entitled to it. I think that was the very deserving to be in this picture here.

Q. That was part of a national movement, wasn't it? A. It was part of a national movement headed by Mr. Maltbie. We started it here and it became a national movement through this National Electric Railways Association.

Q. If a ten cent emergency fare were granted September 15th, and it applied to commutation rates, what would be the effect as to commutation riding? A. Well, that's problematical, but if we were going to raise the four and a half cent commutation to ten cents right off the bat, it might have some effect.

Q. Mr. Emmons, taking exhibit No. 19 which was put in a few minutes ago? A. Yes.

Q. Isn't the estimated amount of income for 1926 on 1926 figures on four tokens for a quarter just about what you estimate you will bring in by your present rate of fare this year? A. For the rest of the year?

Q. No, for the entire year. A. That was made to equal so. What we wanted to find out was how many additional passengers we would have to carry to meet this.

Q. I mean this year, not 1926. A. I believe I did not get you straight, your question.

Q. Isn't the amount of estimated net income at four tokens for a quarter just about what you estimate your net income will be for the concurrent year if a seven and a half cent rate is continued? A. Yes. We have 489 against 436, yes.

(Mr. Howard) That's on the assumption, of course, that that riding were increased by 18%.

(Mr. Tingley) That's right. Thank you, Mr. Emmons.

(Commissioner Harper) Mr. Emmons, I just want to ask one question. In the earlier part of your cross examination, I gathered from what you said that you base your claim for an immediate increase of rate not so much upon the immediate existing status of the company, say on April first, as on what you apprehend is going to

follow from now on, for sometime in the way of decreased business?

(The Witness) It is because it has been going down so much, Senator, that we are getting in bad shape that I feel the little credit we have had has been slipping from us.

(Commissioner Harper) But it's not the immediate condition of affairs?

(The Witness) I think it's absolutely right on our backs, and my knowledge of the length of time it has taken to go thru a real case, and my fear that it will take several months, for a real rate case, makes me feel absolutely certain that we cannot afford to wait until we are thru with it.

(Commissioner Harper) I gather from what you said, it was the immediate future you had in mind, rather than the actual present condition?

(The Witness) Well it's the immediate future, but our present condition—we put this in the first of August, hoping to have some relief by August 15th, and here we have gone to September 6th, before we have a hearing.

(Mr. Tingley) But both August and September are improved showings?

(The Witness) I don't think they did. Look at the net of $30,000. It's the net that's worrying me. It isn't the revenue passengers, it's the net income.

(Mr. Tingley) The loss in that was less for both August and September.

(The Witness) The loss was a total net, wasn't it?

(Mr. Tingley) It does look as if it showed the turning point, tho, doesn't it?

(The Witness) No, I think not.

(Mr. Tingley) That's all I wanted to ask Mr. Emmons.

FOURTH DAY

Thereupon

C. D. EMMONS

a witness of lawful age produced on behalf of the applicant having heretofore been duly sworn according to law, resumed the stand, was examined and testified as follows:

CROSS EXAMINATION

(Continued)

By Mr. Clark:

Q. Mr. Emmons, I have read carefully through the petition filed by your company asking for an immediate increase in the car fare, and I find that the reasons you give for that application are two. First, that you may be able to provide adequate service. Second, that you may be able to meet your obligations. They are the only two general reasons you give, aren't they? A. Those are the two reasons we give.

Q. Now, haven't you in cross examination eliminated the matter of adequate service so far as the next two or three months are concerned? A. I think I have not. I have said that the way the earnings are going that we should further cut service, but we are not doing it in the hopes of having relief that would keep up from doing it.

Q. In other words, do you mean to tell the Commission that if you are not granted an immediate increase in fare that you will furnish the people during the next two or three months with inadequate service? A. I haven't said that. I said yesterday I didn't think the service was adequate as it is; that real adequate service in a city of this size was a ten-minute headway. We have cut to twelve. We don't want to have to cut further.

Q. Instead of inadequate service then, I will use the term present service. Would present service be affected in any way against the public? In other words, would it be less for the next two or three months, or until the permanent case is heard, should the Commission decide not to give you an immediate increase? A. I think to keep

our credit position, which is the second question, I think we will have to.

Q. I am not talking about that now. A. I say in order to keep our credit position I think we will have to. Those two would have to go together. Service eats up money. If service is taking all the money we have and more then you have to cut service. You simply have to cut the garment to suit the cloth.

Q. In other words, in the next two or three months, if the Commission does not give you an immediate increase, you will decrease either the quantity or quality of service below what it is now? A. I say that is quite likely and very likely we will have to do it.

Q. What do you mean by that now? That you will? A. I mean if our credit position requires it, we will.

Q. I am not speaking of the credit position now? A. Those two must go together.

Q. You mean to say that that little variation, whatever it might be, in service would disturb or affect your credit position? A. Very much. The result that we would obtain, yes.

Q. Will you tell us how or in what way you would change either the quantity or the quality of the service if this immediate increase is not given? A. Well, if you want an example its simply this. It looks like we may make $30,000.00 net in the month of August. We haven't the figures yet. Now, if a further reduction in passengers should eat up that $30,000.00 and we would go into a deficit figure in September, it certainly would hurt my credit, and if I saw it coming I would certainly cut the service to get that much out of it some way or another.

Q. Your net for the first six months was what? A. It's on these exhibits. I can read it to you. The net for the past seven months was $435,000.00.

Q. $347,000.00, wasn't it? A. I guess that's it. I haven't got it right here. It's in one of these exhibits.

Q. Now, the last half year is always more profitable than the first? A. It generally is, but it certainly does not look as if it will be this year.

Q. In 1924 your net for the first six months was only $343,000.00? A. Possibly so. I haven't it with me.

Q. Did you make any material change in the quality or quantity of the service? A. In 1924?

Q. Yes. During the later months of 1924 because of that earning during the first six months? A. That's evidently the reason we were in here in 1924 for an increased rate, because the net was falling off to such an extent that we needed an increase, the same as the present time. 1924 is the last rate case.

Q. It increased in 1925 to $369,000.00 for the corresponding period, and further increased in 1926 to $459,000.00 for the corresponding period, and now for the corresponding period of 1927 it falls back to $347,000.00, which is, however, still more than 1924. A. Well, you have that trait, have you not; that the first six months of '24 was on a seven cents basis and the first six months of '25 was on a seven and a half cent basis?

Q. Yes, I have all that. A. Well, that makes the difference.

Q. But I don't have this; that conditions are such that if you are not granted an immediate increase in the next two or three months that you will decrease the quantity or quality, or probably both, of service to the public? A. I think I have given you the answer. If we find that we are going to lose all the net we have, and going into a deficit, and not going to keep our credit, we certainly would have to do it.

Q. Don't assume impossibilities now. A. That is not impossible. $30,000.00 is very easy to slide away from.

Q. Is there any indication in Baltimore City that conditions are going to get so much during the subsequent months than they have during the previous months of this year? A. I think this line right here is the indications of conditions, and its continually getting worse. (Referring to applicant's Exhibit No. 11). The privately owned operated automobile is continually getting worse.

Q. Continually over the period of what time? A. Since the middle of 1919. Very seriously getting worse.

Q. But what is the prospect of any very serious fluctuation along that line for the next two or three months? A. I tried to get this to you and to the Commission yesterday; that if a thing is continuously bad and keeps on to infinity, there is no actual sudden drop, as you have been trying to say, but there comes a point, when something has to be done.

Q. Yes, and our opinion there is if anything has to be done that point is when this case is heard on its merits? A. I say the point has been reached before this and we should have had relief before this.

Q. Now they are the only reasons, such as you have given, that an immediate increase is necessary to provide adequate service for the next two or three months.

(Mr. Howard) Are you referring to what he gave in his direct examination?

(Mr. Clark) I am referring to his answers to my questions.

(Mr. Howard) You said you were confining him to one of the two points; adequate service.

(Mr. Clark) I am speaking now of adequate service, and I have been trying to get him to give me the reasons that would make the service less adequate either from the quantity or quality viewpoint if this fare is not increased immediately.

(The Witness) If you want the questions of sudden change in expenses, which also must reflect itself in service we are confronted with three sudden changes at the present time. One is the increase per kilowatt hour rate of power, another is the need of an increase in our accident reserve because of the increased cost of accidents, another is the increased assessment that the City has sent over to us in our tax bill, which in itself will take $75,000.00 additional.

Q. Yes. What can you assign as the reason for increased costs from accidents? A. The jury verdicts have been increasing right along. I think it's another part of the increase in living. It's just catching up to the increased cost of labor and everything else. The

juries begin to realize that the man that got 40c an hour before and gets 60c an hour now must be compensated at the present rate of wages. I think you are trying to say that there might be some discontent to the company reflected in the verdicts, but I am not sure that that is so, and I don't think it is so.

Q. And that is about the only reason you can assign? A. I don't know of anything else. I think our cases are tried as well as anywhere.

(The Chairman) Have accidents been any more frequent, Mr. Emmons? Do your figures show there have been more of them or are they of a more serious character in the last year, than they have been before?

(The Witness) As far as accidents per ten thousand miles is concerned we are about holding our record, but the curious part about the thing is a gradual increase, and it has been going on right along.

Q. You say going on right along? A. Yes, for quite a time. It's another one of those continuous things, not a sudden drop. If you will notice the accident reserve that we have had it has been gradually been going down for the last several years, and our accident cost per case has gradually been going up, and our number of cases have been gradually piling up. I have a memorandum here that in the month of July we settled 317 claims at a cost per claim of $98.65. In July last year we settled 329, about the same number of claims, but the cost per claim was only $61.14, an increase of about 50% per claim in that.

(Mr. Tingley) Do you think that skip-stop plan of operation has had anything to do with the increase in the number of accidents?

(The Witness) I don't. Our number of accidents per ten thousand miles of cars operated is holding just about the same as before.

(Mr. Tingley) Would that increase in the average amount of payment be attributable to the number of death cases that have occurred in the last year, the extraordinary——

(The Witness) No, I think not. No, I am quite sure of that.

(Mr. Howard) I think it's a matter of knowledge among us lawyers that it costs more to injure a man than to kill him.

(The Witness) The fact is that on the docket at the present time, there were 375 suits on the docket, July 31st, 1927, as against 310 July 31st, 1926. So in spite of our trying to keep them down they are gradually growing. I wanted to give that because those are some expenses that we have to meet and are shown in one of our exhibits with the exception of the $75,000.00 tax increase.

Q. I don't want to carry this phase of the investigation further than necessary, but it's really surprising that with all the improvements in operation looking to safety and a reduction of accidents, that you make the statement that accidents are gradually increasing? A. I did not make that statement.

Q. Well the cost to the company resulting from accidents? A. That's true, but all the safety devices you can put on doesn't interfere with the cost of the accident.

Q. Then the costs are increasing? A. The costs are increasing.

Q. And you say the reason for that is that the juries have applied the higher cost of living to their verdicts? A. I think that's true.

Q. Now Mr. Emmons what particular economic condition in Baltimore could you refer to that would cause you to conclude that the receipts or revenues of the United are going to receive any sudden or dangerous setback in the next two or three months? A. I have said several times that it isn't a sudden setback, it's a gradual decline. I gave the figures yesterday how since the beginning of the year, January came out very well, and the other months if you want me to go over that again.

Q. No, I don't want you to go over that. A. When we got down to the month of May we were back of every year back to 1920. That isn't sudden, Mr. Clark, but it's a very definite retrogression of our receipts.

Q. You are relying on the gradual decrease in the volume of business done? A. You can gradually go down in health and finally die, but there is no suddenness in it.

Q. Now is that condition peculiar to Baltimore City? A. No, I think other cities have the same trouble, and other cities are getting to a position that they have to go through the same trouble that we have here, asking for an increase.

We had an example the other day, the Washington Commission was here, they know, and my friends the President of the Capitol Traction Company told me that he will have to do the same thing. There are 24 cases pending now before Public Service Commissions for an increase in rate of fare.

(Mr. Tingley) How many emergency cases are there?

(The Witness) I am not sure that any of them have gone into an emergency rate.

Q. I was just about to ask you that question. As a matter of fact this is the only company of any size now before any Commission on an emergency plea? A. As far as I know, but the other companies may have gone in sooner, saw the result coming and made an application in plenty of time. This application should have been in last May.

Q. Do you know, Mr. Emmons, there is a generally lowering of the employment index about 3 points all over the country? A. I read just recently a statement from the Association of Commerce that there was nothing alarming at all about the employment index at the present time.

Q. No, nothing alarming. 3% ought not to alarm.

(Mr. Tingley) It shows that it is improving.

(The Witness) It is not the non-employment. If that were the case we should live through it in that way. It is the definite inroad of the private automobile in the business of the street railway. It has to in some way be overcome.

Q. You do know that comparing the first six months of this year with the first six months of last year that there is a lower index figure by about three points? A. I think that may be true. I am not sure.

Q. And you know that that index figure, however, is improving? A. No, I don't know that.

(Mr. Tingley) I think that report shows that.

(The Witness) I have it here.

(Mr. Howard) You are speaking on index or unemployment?

(Mr. Tingley) Yes.

(The Witness) It just calls attention to some improvement in the building trades, Mr. Tingley.

Q. Nothing more generally affects the quantity of riding than employment, does it? A. Sometimes unemployment tends to some additional riding. When men have leisure they sometimes ride when they wouldn't otherwise.

Q. But it is the employee class that you depend on for your regular rides? A. They are the regular riders without doubt.

Q. And when employment drops off, naturally riding drops off. A. To some extent.

Q. And they should more or less correspond? A. No, they certainly do not. Employment could go off 10% but riding would not go off 10%.

Q. No, not to the same extent, but in proportion? A. No, the proportion would have to be very small.

Q. Now, Mr. Emmons, do you know anything about the payroll index? A. I know what ours is. I gave it to you.

Q. I mean the general payroll index for the first six months of last year.

(Mr. Howard) Mr. Clark, might I ask what the pay-

roll index is, because I don't happen to understand the term myself. What does it mean? What is it?

NOTE: Pamphlet here handed to counsel.

Q. Well, the payroll index would probably follow the employment index, wouldn't it? A. Is that in Baltimore?

Q. General. A. General payroll index?

Q. Yes, sir. A. What does it include?

(Mr. Howard) What you hand me factory employment payrolls. Is it an index on factory employment?

(Mr. Clark) I was speaking of general employment.

(Mr. Howard) Then what is the difference between the unemployment index you have just mentioned and the general employment index you now mention?

(Mr. Clark) I am getting my figures from the Federal Reserve Bulletin.

Q. (By Mr. Clark) At any rate, Mr. Emmons, what I am getting at is this. There seems to be all over the country now a reduction in business and a reduction in employment, wholesale business and retail business and general employment, of around 2½ and 3%. You know that to be a fact, don't you? A. I know there is some reduction. I don't know the percentage.

Q. I think you have referred to this condition as a general condition and not applying only to Baltimore City? A. I have. Not in that way. I have said that other cities are suffering in the same way by reduction in passengers. I think it is due to the automobile, rather than unemployment.

Q. So you assign as the reason for the reduction in revenue passengers the automobile condition? A. I do.

Q. To what extent? A. Almost entirely.

Q. You do not at all consider the competition of walking? A. That I think is entirely negligible.

Q. Entirely negligible? A. Just negligible.

Q. The increase in the street carfare has, in other

words, absolutely no effect whatever on the 435,000 riders living within two miles of the center of Baltimore City? A. I didn't say no effect whatever out of 435,000 riders.

Q. Yes. A. Suppose you could bring a thousand in that would say that they walk on account of carfare, would that be any material percentage of it?

Q. I think your supposition is wrong. A. No, I think not. I don't think you could bring a hundred in that would say they walk.

Q. You said that any rate the competition of walking is negligible. A. I didn't. I said almost negligible.

Q. And you are basing your conclusions on that assumption? A. I think that is right.

(The Chairman) You think then, Mr. Emmons, it would be what the weather bureau sometimes says "A trace."

(The Witness) A trace, yes.

(Mr. Markell) That's a good way of expressing it.

Q. Mr. Emmons, we had automobiles in gradually increasing numbers up to 1920, did we not? A. We did. Very slightly, however, in 1920. That is the beginning of the big rise in the automobile business at that time, in fact it's so small that we didn't carry this curve up and down to show it (referring to applicant's exhibit No. 11).

Q. Nevertheless there was a gradual increase of revenue passengers from the time of the consolidation of the Baltimore Companies into the present company of 1899 up to 1920, that's true, isn't it? A. That is true. But now may we get this. That from 1900 to 1920, in twenty years, there were up to 100,000 automobiles registered, 5,000 a year. From 1920 to 1926 that one hundred thousand reached 267,000 in the six years, increased 167,000 or nearly 30,000. That's the difference, and that's what's made the trouble.

Q. Was that increase a sudden increase starting in 1920? A. Very much so. I would call that sudden.

Q. Well, we have those figures and we can cover that point in the argument? A. Yes.

Q. It was nevertheless a fact that the end of 1920 was when the revenue passengers started to decrease? A. And at the same time the automobile made a big increase.

Q. And you say at that same time was when the automobile made a sudden increase? A. Yes, sir.

Q. Now you have, Mr. Emmons, given this additional reason for your application for an immediate increase in fare; that you might be able to meet your obligations. With respect to that reason you have nothing to add to what you have already stated to Mr. Tingley on cross-examination? A. No, but I was rather interested in your statement, and I think it applies fully here. You saw the danger of losing passengers and the difficulty of regaining them. The danger of losing our credit is the difficulty in getting it back.

Q. How did you happen to throw in that analogy? A. I think the statement was very well put by you and I am glad to use it in the case of our credit.

Q. I don't want to start an argument with you, Mr. Emmons, but that doesn't answer my question? A. You asked me if I had anything further to say than I gave Mr. Tingley. No, I have not.

Q. Now then you allege in your petition five facts as well as I can gather them and I read it very carefully, that you relied on to support your application for an increased fare for these two reasons.

Now the first fact you give is the long period of years during which your petitioners revenues have been grossly inadequate. Now that fact is based on the question of value and return.

The second fact you give is that substantially increased temporary fares can be put into effect immediately and before any hearing without possibly resulting in a return in excess of what has been determined a fair return on the value of its property. So that fact is based on the question of value and return.

The third fact you gave in support of your claim was that past returns have not reached Commission estimates or forecasts in past cases. That also is based on the question of value and return. A. No, that statement is not correct.

Q. That past returns had not reached the Commission estimates or forecasts in past cases? A. That hasn't a thing to do with valuation or rate of return.

Q. It has to do with returns? A. Returns compared to what the Commission said we should have for the purpose of credit. The question of valuation and rate of return is not in that at all.

Q. I will leave out the word valuation, because you didn't have a valuation at that time. It's based on the question of returns. A. Not rate of return, however, get that straight.

Q. It's based, however, on the question of returns? A. Returns, yes. Not rate of returns.

Q. Now the part, that the necessary gross income, which is the return, has not been reaching what the Commission years ago said was necessary for the credit position of the company to be maintained. That also has to do with returns. A. If you limit yourself to the question of returns, yes.

Q. And they are all based on what you regard to be your rights in the matter? A. Our needs in the matter.

Q. And as Mr. Markell says your needs, and your rights growing out of those needs? A. Having the needs we need to exercise the rights to get our needs.

Q. Mr. Emmons, as a matter of fact even in this emergency hearing, isn't your chief contention that you are entitled as a matter of right to a higher return than you are getting? A. No, in this emergency hearing our chief contention is we need quick relief. We came over and filed this the first of August. We had hoped during August to have relief. We have now gone into the month of September and from the trial of a temporary emergency case like this it can well be seen how long a real

trial is going to take. We cannot wait until the end of a real trial to have some relief, and that's what we are urging and seeking for today.

Q. What would you put into the permanent case more than you have put into the emergency case to prove your permanent case outside of the question of depreciation? A. We have quite a lot of things that go into the permanent case when we get into that and I don't think we want to get into it today. I did think one item that is outstanding is the question of depreciation. We are allowed 5% on our gross receipts.

Q. I said excluding depreciation it would simply be what you have already put into this case in more detail. A. No, there are other items that haven't been mentioned in this case.

(Mr. Tingley) We can try that case when we get to it.

(The Witness) I just had fifteen of them, Mr. Clark, if you want to know what they are.

Q. What I am getting at, Mr. Emmons, is this, you only give one reason so far as I could see based on existing conditions, and that is using your language or about your language finally that for the current year 1927 revenue passengers are running 2.37% lower than last year, and that this percentage will probably be maintained throughout the year with a consequent loss in income. A. I would rather change that 2.37 to about 4. to 5. which should be done.

(Mr. Tingley) The petition was filed on August first?

(The Witness) Yes, that's the way we were running at that time.

Q. Now, Mr. Emmons, that fluctuation isn't anything unusual in operating affairs. A. The fluctuation is unusual because it has been so steady and seems so permanent.

Q. You had a fluctuation in 1921 of 6.24%? A. That was an absolute business depression that we looked upon in that way and at that time we made the same kind of

a cut in salary from the President down as Mr. Tingley referred to the cut in the Gas Company.

Q. In 1924 there was a 4.29%. A. There was a zone extension in 1924 that accounted for that. All the different zones extended.

Q. Do you know how many cities there are in the United States having a population of one hundred thousand or over? A. I am not sure. I have got a list of cities of four hundred thousand or over. You might give it Mr. Clark if you know it.

Q. I calculate there are about sixty cities in the United States of one hundred thousand or over. A. That may be true. I am not sure. I only have a list here of four hundred thousand or over, and I think there were twenty cities with four hundred thousand or over.

Q. Now, Mr. Emmons, do you happen to know how many of the cities in the United States of one hundred thousand or over population have a flat fare exceeding 7½ cents? I don't mean to say by that that our 7½ cent fare is a flat fare, but I am asking you that question; do you know of any city, if so how many? A. I do not know it in that way, but I do know that the American Electric Railway Association's statistics show twenty-one cities with a flat fare of ten cents, one hundred and fourteen cities of a population of twenty-five thousand or over with a basic fare of ten cents. Not a flat fare.

Q. Now did you mean flat or basic? A. I said flat at first and I say basic now.

(Mr. Howard) And you mean it not.

(Mr. Tingley) I would suggest we limit the present cross-examination to the emergency and get into the permanent case when we get to it. This is all a controversial matter and we can take care of it when we get into it.

(The Chairman) That was the statement of the Commission at the outset. This is purely an emergency matter and we hope to have the case confined to the question of the emergency and what constituted the emergency.

(Mr. Clark) Well, Mr. Chairman, my only reason for this is I didn't intend to carry it very far, there has been a great deal said about fares, there has been a great deal said by Mr. Emmons, and it's in the record, what fares are charged in other cities, and I think on cross-examination even something was said about that.

Now I know it hasn't very much of a bearing on the question of the temporary fare but it is directly in issue in the temporary case because Mr. Emmons is asking for a flat increase. Now I assume that when the Commission changes the present schedule, and I am assuming now that the Commission gives an increase over the present fare following the application of the company, that it would give a flat increase. In other words, it would be an increase to eight cents or nine cents.

Now I am trying to show that and I am not going to carry it too far that even in an emergency case, should the Commission come to the conclusion that an emergency exists, and relief should be granted them, that that relief should not be granted in the form of a flat fare. I propose to show that the flat fares are things of the past.

(The Chairman) But, Mr. Clark, would that be better, isn't that really a matter of argument, as to the advisability, which you suggest for the moment, that the Commission will grant an increase of fare? Of course that has not been determined at all, but whether if the company makes out its claim for relief in the form of an emergency fare, the form in which that release should take is a matter of argument, I might suggest, and I don't think that it's necessary to go into a great deal of testimony to bring out the fact that other cities do not have that fare. They are methods of which the Commission is entirely conversant. We have records here and exhibits have been submitted I believe which show the rates in other cities. I think the Commission may be trusted to exercise fairly good judgment on that matter.

(Mr. Clark) Yes, and for that same reason, and you will find it in our answer on protest, that all the facts in this case are practically existing facts and facts of record before this Commission, and we could have gone on with the argument of this case from the very beginning.

However, we have to make up a record in this particular case, more of a compilation than anything else, just a compilation from existing records.

Now if this had been a Court instead of a Commission we would have demurred in the very beginning, because assuming everything the United says in its application as a fact, they are not entitled to relief because of emergency reasons, but it has been decided that demurs are not proper before this Commission, and therefore we had to go to trial and spend days and days proving facts which if proved really do not determine the case in the end.

Now I think that we are drawing rather narrow restrictions when we say that the question of fares and what fares are charged and what rate schedules are and what the modern trend in rate schedules is, whether it's a schedule recognizing the frequent rider or schedule absolutely ignoring the frequent rider and so on, are absolutely not pertinent to this particular hearing.

(The Chairman) Mr. Clark, if you will permit me to suggest that on the application of the company the records in the past cases before the Commission have been made part of the record in this case, and there are hundreds of pages in those records to which the Commission can refer if it desires to show all this thing about this rate and the various rates and the combination rates and the weekly pass and everything else.

(Mr. Clark) Yes, I know. I have been over that. Now what I would like to show by this witness and have an answer to this question, I just want to prove, and I want it in this record, if the Commission, please, that the tendency today is not the flat rate, and you will probably not find anywhere in the United States a flat rate exceeding 7½ cents.

(Mr. Markell) He has just testified to twenty-one.

(Mr. Clark) No he hasn't. He said basic.

(The Chairman) In the discussion created by yourself and myself, we have probably taken up too much time, and we will have Mr. Emmons answer that question.

(The Witness) I think I did answer it. The records show that there are 21 cities with a ten cent straight fare. There are 114 cities with a basic straight fare, that's including the 21, and these basic fares have changes from ticket rates all the way from a dollar to eleven checks down to the lowest which is a little over nine cents. These are changing very much, Mr. Chairman, as I read yesterday from the "Rate Bulletin." I think Mr. Wolf has it also, Bulletin No. 85 of the American Electric Railways Association, showing the number of cities that had tried passes and the number of cities that had given them up; the number of cities that had tried identification cards and the number of cities that had given them up. They are all feeling for what Mr. Clark thinks is a final conclusion.

Q. (Mr. Clark) Not at all, because I don't think the Commission would consider that at all in the emergency case, but you are asking for a flat emergency fare, and I was just simply getting into the record the fact that flat schedules are not today the character of schedules that are being composed and adopted. A. We are asking that for two reasons, Mr. Clark, one is that it's required in order to give a proper result for the present year for the purpose of credit, the second reason is that we think when we get into our full case we can well substantiate the need of a flat fare.

(Mr. Tingley) Mr. Emmons, of those 21 cities that have a ten-cent straight fare, how many would you say has a population of over 100,000? Just one isn't it? A. Oh, no, those cities around Boston, Brookline for instance, Cambridge, they all have over 100,000 and are included in this list.

(Mr. Tingley) They are suburbs of Boston and some of them are suburbs of Chicago?

(The Witness) Yes, they belong to those lines.

(Mr. Markell) The smaller the cities the more short riders which we have been talking about.

(Mr. Clark) I am going to ask the Commission to allow me to ask these questions to test Mr. Emmons' frankness with the public in this matter.

Q. (By Mr. Clark) You have made a statement to the public, notwithstanding the fact that what you are asking for is a flat emergency and a flat full fare, you have made a statement in your pamphlet called "Ask me another about the car fare?" That there are 114 cities in the United States with a basic fare of ten cents. Now you are asking for a basic fare. Why didn't you either explain basic fare or limit your statement to the flat cities? A. We tried to make that a frank statement Mr. Clark and purposely put basic in so the public would not be misled that it was a ten cent fare city altogether. The statement is often made that certain cities are ten cent fare cities and there is a qualification. We wanted to show that there was a qualification when we put the word basic in there. That was purposely put in so that the public would not feel that it was entirely ten cent cities.

Q. You were asking the public for a flat fare? A. We are.

Q. And you are citing the fact that there are 114 cities having a ten cen basic fare? A. Basic fare.

Q. Now, you know they are just as different as they can be? A. I know it and I think the public know it.

Q. How many cities of all the cities in the United States have a ten cent fare? A. I told you twice.

Q. How many? A. 21.

Q. Flat fare? A. Flat fare.

Q. Ten cent fare? A. Ten cent fare.

Q. That's 21 of all of the cities in the United States? A. Of over 25,000.

Q. How many cities are there? A. I do not know off hand. About 225,000 Mr. Swaine says.

Q. 21 out of 225. Now Mr. Emmons just one more question along that line. The distribution of the population over the city, with respect to the center of the city should control the character of rate schedules shouldn't it? A. I am not sure that I get you. Do you mean the difference between our city having four directions to the

center as compared with other cities that sometimes only have three, like a city on a river bank, a city on a lake shore, and New York, pretty nearly has only one direction? I am not sure just what you mean.

Q. The distribution of the population from the center of the city, that is the number that live within two miles and that live within four miles and within six miles as the case might be, from the center of the city, should have a great deal to do with the character of the schedule adopted? A. If we were in England, it would have, but if the American cities desires and insist on one fare within the city limits from one point to any other point, it can't be done.

(Mr. Clark) Now, if the Commission, please, in the very beginning, I knew that practically on questions could be asked Mr. Emmons on cross-examination that would really bear on the question of emergency, except such questions as would show in Mr. Emmons' present application there are not emergency allegations. The questions that I have asked thereon the allegations, that Mr. Emmons has placed in his application, and I don't want the Commission to conclude that my judgment is that anything that I have asked this morning on cross-examination has a thing in the world to do with the temporary rates, not a thing in the world, I have simply cross-examined him to a small extent on the allegations that have been made and on the testimony that has been put into the record. Now, I am not going to extend it any further.

(Mr. Howard) In other words, you don't waive your demurrer but go to trial on the issue?

(Mr. Clark) I am prepared to go right straight now into the argument and I do not care if you extend this case for another week, it will simply be extended on the allegations which have been made none of which go to the point of an emergency, and all of which is wasted time. I am through and ready to argue the case now.

(Mr. Howard) Do you want to enter a motion to preclude any evidence for the other side?

(Mr. Clark) No, sir, you can amend your application if you want to.

(The Chairman) Are you through Mr. Clark?

(Mr. Clark) Yes, sir.

(The Chairman) Before we go on, I would like to make a brief comment on the statement that has been made twice by Mr. Emmons. Yesterday and today reference was made to the application and the expectation of the Company to have relief by August 15th on this emergency application. That statement, of similar import was repeated this morning.

For the Commission, I would just like to point out that the application as Mr. Emmons has just testified was filed on the first of August and the Company expected relief action by August 15th. The hearing has just begun. The Company as Mr. Emmons testified yesterday began a consideration of this matter of emergency relief in June. It had June and July to consider it and it considered it in that time, and on August brought in this application.

We do not think that the Company has any right to expect action by the Commission on a date determined by the Company without any regard whatever to the cases that were pending before the Commission of its other work.

The members of the Commission had cases and other work that were pending before the Commission and have foregone their vacation in order to meet the situation created by the Company's emergency application, and I think that while there has been a delay, or the time has gone beyond what the Company might have expected, certainly the Commission has been as diligent as it was possible for it to be in taking up the Company's case.

I just wanted to say that in reply to the suggestion that the Company was disappointed in not having action by August 15th, when it brought in its application on the first of August, after having considered the matter for two months. It apparently expected the Commission to act in 15 days.

(Mr. Howard) No criticism was intended whatever by Mr. Emmons.

(The Witness) No.

(The Chairman) I didn't understand that Mr. Emmons intended to criticise the Commission in any way, but I just wanted to make that statement to show that the Commission had been diligent and had not delayed the case.

(Mr. Markell) This Company certainly recognizes that.

(The Witness) I certainly wish to be put in the proper position, because when I found out Major Whitman was leaving, and that the Commission had certain things to clear up, I am sure you will say and I am sure those about me will say that I took the position that there was nothing to do but to wait patiently, which we have done, and we want to apologize if you feel that way, at all about it.

(The Chairman) We don't feel that in your statement yesterday and today there was any criticism intended of the Commission, but words in print and words spoken sometimes have a different appearance and as the statement was in the record and it might imply that the Commission had not been as desirous of proceeding with the case as promptly as it was necessary, I think it is necessary to have the record to show that we did proceed as diligently as it was possible under the circumstances.

(Mr. Markell) We certainly confirm that view.

RE-DIRECT EXAMINATION.

By Mr. Howard:

Q. You were asked on cross-examination about your accident allowance, and your accident reserve and what I want to ask you to explain is this. You still have a credit to your accident reserve. The question I want to ask you is whether or not the credit of your accident reserve is not equal or exceeded by the prospective amount of liabilities that have already accrued but are to be settled in the future?

Or to put it another way, do you carry over from one year to another, an amount of unsettled liabilities that equal your reserve or not? A. Yes. We always carry

over a lot of unsettled claims, for instance today we are settling claims back as far as 1919. These are stetted cases in Court, often the reason why they are heard this way. Another one occurred in 1920; two in 1921, one in 1923; four in 1924; eight in 1925; the majority being 1926 claims, that are being settled now.

We have gone back in our accident reserve from I think about $350,000 we had in it at one time, to beginning this year was $302,000 at which times we were criticised by Haskins and Sells by not having a reserve large enough in addition to the actual claims that we had out, giving them a basis of settlement. We hadn't much more than enough to settle the actual claims, and they held the amount should be higher to provide for a calamity or some unusual liability. That's what we had endeavored to build our accident reserve up to, but since the first of the year, on account of the increased cost in claims, we have gradually slipped back until at the end of July we have expended $70,000,000 more than we had set up under the three and a quarter per cent. of passenger revenue that we had been providing. That $70,000,000 at the rate of $10,000 a month, we have assumed are accident expenses, to put ourselves in the position as of the first of the year, would take $120,000 more.

Q. In other words, I might express it this way; that if the Company were to quit business and incur no more accident liability at any given point of time, now, the amount in the accident reserve wouldn't suffice to pay the outstanding liabilities for things already occurred, is that right? A. I think it might but it wouldn't take care of the cases that are still to come. For instance today there are a lot of cases unfiled.

Q. That's what I mean, if the Company were to stop operations at once, and incur no more liabilities, not that those already filed but what its already incurred, the accident reserve would not suffice? A. It would not cover it, no.

(Commissioner Harper) I understood you to say that there was an increase of $75,000 in taxes. What taxes are they Mr. Emmons?

(The Witness) That follows the valuation. We were given an additional assessment by the city of $3,000,000.

First they sent over an increased assessment of $7,000,000 and after talking the matter over with them and pleading for some better treatment, and on the fact that we at the present time are the highest taxed street railway in the U. S. because of our Park Tax, that assessment was finally compromised at $3,000,000 increased assessment over last year. That on the present city basis is about $75,000.00.

(Commissioner Harper) That's your property in the City?

(The Witness) Yes.

(The Chairman) In other words, it costs you $75,000 a year to get a valuation of your property?

(The Witness) It looks that way.

(The Chairman) Any further questions, Mr. Howard?

(Mr. Howard) No, sir.

(Examination Concluded.)

(Mr. Howard) We have two short financial witnesses which will not be able to be here until this afternoon, and I was going to suggest that Mr. Tingley go on with his case in the meantime.

(Mr. Tingley) That will be perfectly satisfactory, if those are the only witnesses you will have.

(Mr. Howard) Those are the only witnesses in chief. We may have something in rebuttal.

(Mr. Tingley) Mr. Howard, as I understand the arrangement, when your witnesses come, will you want to interrupt our case to put them on?

(Mr. Howard) We would like to have the privilege of putting them on sometime after recess.

(Mr. Tingley) That's entirely satisfactory.

If the Commission please, at the outset we would like to offer in evidence, as a formal matter the protests that have been received by the Commission to an increased fare and ask that they be made a part of the record.

We will not be compelled to offer in evidence, or to move that there be included in the record the testimony of Mr. Feustel, in the valuation case because the railroad company has already made its entire valuation a part of the record in this case. Now I will call Mr. Wolf.

PEOPLE'S COUNSEL'S CASE.

Thereupon—

H. CARL WOLF,

a witness of lawful age, produced on behalf of the Public Service Commission of Maryland, having first been duly sworn, according to law, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Tingley:

Q. Mr. Wolf, state your full name? A. H. Carl Wolf.

Q. Are you employed by the Public Service Commission of Maryland, Mr. Wolf? A. I am. As Chief Engineer.

Q. How long have you been Chief Engineer of the Commission? A. Something over five years.

Q. How long have you been connected with the Commission? A. Something over six years.

Q. During that time have you had a considerable amount of experience in the affairs of the United Railways and Electric Company? A. I have.

Q. You were in charge of the valuation of the properties of the Company that was made, weren't you? A. I was.

Q. You have made several investigations in connection with rate cases of the Company? A. I have.

Q. Mr. Wolf, have you made an investigation and prepared exhibits with reference to the claim of the Company that an emergency now exists, requiring an immediate increase in fare? A. Yes.

Q. Will you outline the results of that investigation to the Commission? A. The first exhibit that we have prepared is entitled "Estimate of Income for the Year 1927."

(Mr. Howard) Are there any new ones over the ones you sent the other day?

(Mr. Tingley) There will only be two that we were unable to get to you and I don't think they will cause any delay in the progress of the case?

(The Witness) Mr. Howard, there may be a correction or two over those we sent you in which case I will point it out.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Ex. No. 1.

(The Witness) This estimate is based on a decrease in passenger revenue for the year 1927 over the year 1926 of 2.33% which is the same percentage as was experienced in the first six months of the present year.

Q. And that's approximately the same percentage mentioned in the petition of the Company, filed on August 1st, isn't it? A. That's right.

——There is also estimated a reduction in operating expenses of 1.02% for the year 1927 over 1926 which was likewise the experience of the Company in the first six months of the present year.

Q. Passenger revenue for the year 1926 was $16,483,-923 which with a deduction of 2.33% would give $16,099,-848 for the year 1927.

Other revenues are estimated the same for 1927 as for '26, altho the Company in its exhibit did make a slight variation in this figure.

Depreciation is estimated at 5% of total revenues, this conforming to the present practice of the Company. This gives $816,582 for the year 1927, making the total of operating expenses and depreciation without taxes $10,-670,061 leaving net operating revenue of $5,661,573.

From this is deducted taxes, property taxes, etc. amounting to $467,110; park tax of 6.7% of passenger

revenue $1,078,690 and income tax being the tax which would be paid on net income after a deduction of $350,000 for adjustments, which would give $67,333.00 or a total for taxes of $1,613,133 leaving operating income of $4,048,440.

To this is added non-operating income the same as estimated by the Company of $171,000 from those figures are deducted fixed charges of $3,438,000 leaving a net income of $781,440.

Q. Mr. Wolf have you been present during the presentation of the Company's testimony in this case? A. I have.

Q. Have you heard anything which would lead you to believe that a larger percentage of decline should be anticipated during the remainder of the year than that shown in this exhibit? A. No, I believe that this percentage decline is fair.

Q. Now, Mr. Wolf, have you prepared an exhibit entitled "Estimate of Income for 1928 with a ten cent cash fare"? A. Yes.

(Mr. Tingley) I will ask that that be introduced and be marked People's Counsel Ex. No. 2.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Ex. No. 2.

Q. The total net income shown on that first exhibit is only slightly less than the dividend requirements of the Company, isn't it? A. That's right. People's Counsel Ex. No. 2 entitled "Estimate of Income, 1928."

(The Chairman) Mr. Emmons, the dividend requirements are $812,000?

(Mr. Emmons) $818,000.

(Commissioner Harper) Mr. Wolf what is the increase in fixed charges attributable to?

(The Witness) Additional money required for property additions.

Q. Will you explain People's Counsel Ex. No. 2? A. This is entitled "Estimate of Income for 1928 with a

ten cent cash fare," and is an attempt to show what the probable results would be in 1928 if a ten cent cash fare was put into effect. The estimate is made on two bases, first considering a loss of 5% and then one of 10% in the cash fare passengers in 1928 as compared to those in 1926. 1927 is still a matter of conjecture.

Q. What is the reason for assuming that percentage of loss? A. A 5% decrease would result in something less than the estimates of the Company for 1927, while a 10% decrease would show a still further loss as the possible result of reaction against the ten cent fare.

The number of commutation, half-fare and school ticket passengers is considered the same as is estimated by the Company for 1927, hence something larger than was actually experienced in 1926.

The passenger revenue resulting from these two bases are $20,782,993 and $19,729,503 respectively.

Operating expenses are taken the same as estimated by me for 1927, with an increase allowance of $100,000 for power and an increased allowance of $50,000 for accident reserve, making the total operating expenses $10,003,479, which amounted is used under each of the two headings.

It might be well to point out at this time that if the decreases are actually experienced in the number of revenue passengers, either of these estimates would produce somewhat better service to the public, namely, more seats per passenger than are now being served by the reason of the decreased number of passengers and keeping the number of operating expenses the same, which would keep the car miles the same and seat miles the same.

Depreciation is again figured at 5% of the revenue. Taxes are figured as explained in the first exhibit and an addition is made for non-operating income the same as for 1926, a deduction made for fixed charges, slightly more than for 1927, on account of additional money to be required, leaving a net income under the 5% decrease of $4,177,663 and under the 10% decrease $3,373,016.

Under the first of these estimates the amount available for return on investment would be $7,506,663 which would be 10% on a rate base of $75,000,000 and under the second

estimate of 10% decrease there would be available $6,702,012 or 8.9% on a rate base of $75,000,000.

Q. Mr. Wolf, have you prepared an exhibit entitled effect of automobiles on revenue passengers? A. I have.

(Mr. Tingley) I ask that that be introduced in evidence and marked People's Counsel Ex. No. 3.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Exhibit No. 3.

Q. Mr. Wolf, will you explain that exhibit to the Commission? A. The data on this exhibit conformed very closely to those that were compiled by the Company in the making up of its Exhibit No. 11, and the results plotted on the company's Ex. No. 11 are almost identical with the results shown on this exhibit.

The first column on this Ex. No. 3 shows the number of revenue passengers actually carried by the United, each year since 1910. The next column shows the percentage of increase or decrease over the preceding year.

The third column shows the net total automobile registration of locally owned cars in Maryland for each year from 1910 to date. That is we have left out those cars that were registered of residents of the District of Columbia prior to 1923. Prior to 1920, it was usual in estimating for the future, the revenue passengers carried by the Company, at a 5% increase. While the actual number varied each year from 5% the general trend was along this line. The real effect of the automobile was not felt until after 1920, and the attempt in this exhibit was to show what the real effect of the automobile has been.

In view of the impossibility of ascertaining the effect of automobiles owned by suburbanites and not registered in Baltimore City, we thought it advisable to consider the total number of automobiles registered in the state instead of only those registered in Baltimore City, and make a corresponding adjustment in the estimated number of passengers carried in a year by each machine.

This method does perhaps throw off the figures in the earlier years, because the riding habit per automobile has

changed considerably according to our best information but has apparently steadied down in the last few years. But also during the earlier years, the affect of the automobile was less pronounced and hence the results as shown by the start are not materially affected.

The way we got at the number of passengers carried by automobiles who would otherwise be carried by the railway is something like this, as pointed out before the result checking very closely with that obtained by the Company. We attempted to make a study by observation and by conversation with automobilists as to the affect of each automobile on the revenue passengers and have concluded that approximately 600 revenue passengers per year are lost to the United by every automobile owned by people who would otherwise use the lines of the Company.

The man who drives his machine to work every day and picks up a friend or two, greatly exceeds this amount. The commercial truck and the car in the garage has practically no effect. Balancing all those we arrived at an estimate of 600 which I believe to be correct.

Baltimore City has been showing approximately one-third of the registered automobiles in the State. Baltimore City and its suburbs contributary to the lines of the railway rates something over that. We have therefore assumed that the automobiles which would be affecting the revenue passengers of the railway would be two-thirds of the total owned by the State, and applying 600 to two-thirds of the automobiles in the State, is the same as applying 400 to every automobile in the State, which is the way we got at our fourth column.

The next column shows the percentage of increase in the number of passengers carried by the automobiles and the sixth column shows the total passengers carried by street cars and automobiles and the last column the percentage total.

It might be pointed out that the first column and the next to the last column are not corrected in these figures for the effect of the zone extensions in 1924, but I will give the figures as they pertain to the last column.

Looking at the last column it is evident that the percentage of increase since 1920, when the effect of the automobile began to be felt the most, has been less than the percentage before that time. Correcting the last four years for the effect of the zone extensions in 1924, it would change the percentage of .45 for 1914 to 2.14; would change the percentage of 4.14 for 1925 to 5.26; that of 2.52 for 1926 to 2.90 and that of 1.24 in 1927 to 1.31.

What is apparent that even with these adjustments the trend since 1920 of passengers carried by automobiles and street cars has been considerably less than was the experience before 1920, and the conclusion that I draw from that is that the automobiles are not getting all the passengers that the United has been losing.

In other words, passengers are being lost for other causes rather than the automobile.

Q. In other words, the automobile is not responsible for all or substantially all of the decline in riding since 1920? A. That's my belief.

Q. Mr. Wolf have you prepared an exhibit entitled "Ratio of the amount of outstanding securities as of June 30th, 1927, to the basic value fixed by the Commission of $70,000,000"? A. That's right.

(The Chairman) Before you get into that I would like to go back for a moment to People's Counsel Ex. No. 2.

I see in here you have showing on a valuation of $75,000,000. Of course the Commission fixed the value on the property of the United Railways of $70,000,000 without the easements, and $77,000,000 with the easements. The figure on the easements has not yet been determined by the Commission and I am assuming that the figure that you use hereof $75,000,000 is an abritrary figure for the purpose of your exhibit.

(Mr. Tingley) I think I can explain that Mr. Chairman. That's a purely arbitrary figure which we chose that being between $70,000,000 and 77 million dollars and was arrived at arbitrarily.

(Mr. Howard) Any allowance for bringing the valuation up to date in that assumption?

(Mr. Tingley) Yes.

(Mr. Markell) Without any allowance?

(Mr. Tingley) With.

(Mr. Markell) In other words it's 72 and a half plus an increase of two and a half.

(Mr. Tingley) That's right. Now I ask that the last exhibit be introduced in evidence and marked People's Counsel Ex. No. 4.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Ex. No. 4.

Q. Will you explain that exhibit, Mr. Wolf? A. This shows the amount of outstanding securities as of December 31st, 1926, and as of June 30th, 1927, and their relation to the basic value fixed by the Commission of $70,000,000. As a matter of fact, the amount of outstanding securities has not varied much during the past two years, I think possibly the last six months showing one of the greatest variations and hence the two columns. We might have chosen December 31st, 1923, which would show approximately the same result, but would have been exactly at the date of the $70,000,000 valuation. The percentages are very little off.

This shows that the mortgage bonds represent 67.7% of the basic value of $70,000,000, and miscellaneous obligations including these notes are 9.1% on last December and this 10.9% last June, income bonds 20% at both periods, total of bonds and miscellaneous obligations 96.7 in the last period and 98.7 in the later period, and that stock 29.2 in the two periods. The total percentage of bonds and miscellaneous obligation is an extremely high ratio and suggests one reason why the Company has difficulty in securing money on what it calls equitable terms aside from any effect of gross and net revenues.

The high ratio of mortgage bonds, to the matter of property has been a matter of comment for sometime,

the position having been strengthened materially by the Commission's valuation which said, the valuation in the minds of the investing public.

(Mr. Howard) You didn't bring that valuation up to date for this purpose did you?

(The Witness) No, sir.

Q. Have you anything else that you want to say in explanation of that exhibit, Mr. Wolf? A. I believe not.

Q. Have you an exhibit entitled "Ratio of bonded indebtedness to car miles and gross revenue"? A. I have.

(Mr. Tingley) I ask that that be introduced in evidence and marked People's Counsel Ex. No. 5.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Ex. No. 5.

(The Witness) This Exhibit No. 5 entitled data on Street Railway operation in various cities for the year 1926 is made up from the best information we had available as shown by Moody's Manual and by bulletins on the American Electric Railways Association.

Q. I think the confusion was caused by the fact that we assigned two different titles to the exhibit, Mr. Markell. A. It shows for the cities of Detroit, Los Angeles, San Francisco, Pittsburgh, Boston, Cleveland, St. Louis, Baltimore, St. Paul, Minn., Buffalo, Providence, Washington, Cincinnati, Indianapolis, and Denver which are the only sizeable cities on which we could get what we thought was authoritative information, the number of miles of track in each, the funded debt including income, bonds in each, the total revenue from street railway transportation, the funded debt per car mile of track operated, and the funded debt per dollar of gross revenue.

The significance of the exhibit lies in the last two columns wherein Baltimore is shown as having the highest funded debt, per mile of track operated of any of the cities mentioned, being $164,000 per mile, when the bonds are included and $130,000 when the bonds exclusive of income bonds are taken.

The last column likewise shows that the Baltimore Company has the highest funded debt per dollar of gross revenue, being $4.05 if all bonds are considered and $3.22 if bonds exclusive of income bonds are considered.

This again seems to indicate one reason why something other than gross and net revenues might have an effect on financing and also does show a possible reaction in the operating ratios of the Company.

Q. That last column shows that the Baltimore figure is more than twice than obtaining in many of the other cities? A. It is more than twice than any other city except St. Louis, Indianapolis and Denver. That is if all bonds are considered.

Q. Mr. Wolf, have you prepared an exhibit entitled "Securities issued by the United Railways and Electric Company since 1910"? A. I have.

(Mr. Tingley) I ask that that be introduced in evidence and marked People's Counsel Ex. No. 6.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Ex. No. 6.

Q. Will you explain and comment on that exhibit, Mr. Wolf? A. This exhibit shows all of the securities issued since 1910 approval for which was gotten from the Commission.

Q. Is that both of the Company and its subsidiaries? A. Both of the United Railways and its subsidiaries, yes. The purpose of this exhibit is to show that taking into account, the changed levels in interest rates, there has been little change in the borrowing capacity of the Company, since the organization of the Commission.

Q. Will you go over that exhibit, Mr. Wolf? A. In 1911, at which time the first application for securities was made, $3,125,000 of three year notes, were permitted to be issued at 97½, bearing 5% interest.

In 1914, $153,000 worth of ten year car trust certificates, bearing 6% were issued at par. This of course being no indication of the market.

Q. They were 6% securities? A. Yes. In 1914, the

same year, two year 5% collateral trust notes were issued, at 99½, the interest rate being slighty over, being about 5¼%. The same year $489,000 of first mortgage gold sinking fund bonds were issued by the Maryland Electric Railway, bearing interest at 5% and were issued at 96, the interest rate being slightly over 5%. In 1916, $2,750,000 5-year 5% gold notes were issued at 98. In 1917 6% convertible gold notes to the extent of $3,000,000 were issued at 95. In 1917 we were beginning to feel the influence somewhat of the war conditions and some increase in interest rates, and this exhibit reflects that aside from the car trust certificates, the first definite increase in interest rates.

In 1919 5 year convertible notes were issued at 5% to convert some other securities and were not thrown on the market so as to give an indication of the net worth. In 1917, also $457,000 of the Maryland Electric Railways 5% first mortgage gold bonds were issued at 98. In 1920 another issue of car trust certificates bore 8% and were sold at 95. At that time the conditions for borrowing the country over, were very bad, and this percentage probably represented the general trend of borrowing of utilities at that time.

In 1921, before a complete recovery from that slump, a million and a half 7% coupon gold notes were issued at 92¼. This, by the way, was the year after a large amount of business the company had done in 1920 and would seem to indicate that the amount of business done that year before had very little effect on bolstering up the credit, because the notes only sold at 92¼ and were 7% notes.

In 1922, 6 million dollars of first Consolidated Mortgage 50 year gold bonds were issued at 6%. The same year, the exchange was started for the old 4% bonds, increasing them to 6%. In the same year, 1922, two and a half million dollars of 5 year 6% notes were issued. In 1924, $4,000,000 of first refunding gold bonds Series A of the Maryland Electric Railways, at which time a number of the scattered properties were put together under the mortgage and in 1927, two and a half million of three year notes, 6% notes were issued at 96½, which would bring the interest rate slightly over 6%.

Q. Would that exhibit indicate a decline in borrowing condition of the Company, during the years of Commission regulation? A. I would say not.

Q. Would it indicate that the credit of the Company on a credit status is relatively bad? A. I would say not.

Q. This year shows the highest figure since the war, doesn't it? A. It does.

Q. That's irrespective of interest rate? A. That's right.

Q. And those securities were issue this year in July, weren't they? A. That's right.

(Mr. Howard) Haven't you another table that shows that they weren't issued in July but were issued three months sooner?

(Mr. Tingley) Some of them were.

(Mr. Howard) All of them.

(Mr. Tingley) That's right, they were issued to refund.

Q. Mr. Wolf, have you prepared an exhibit entitled "Balance to surplus by years compared to common stock dividends"? A. I have.

(Mr. Tingley) I ask that that be introduced in evidence and be marked People's Counsel Ex. No. 7.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Ex. No. 7.

Q. Will you explain and comment on that exhbiit, Mr. Wolf? A. This exhibit shows the annual balance to surplus, the accumulated average, and the amount of common stock dividend paid for each year from 1912 to 1926 inclusive.

In the latter part of 1912 dividends were commenced, and in the latter part of 1922 they were resumed after having been discontinued in 1919.

This exhibit shows that with the exception of three years, 1916, '20, and '26, the balance to surplus did not reach a million dollars.

It further shows that the total annual balance to surplus for the past five years exceeds that for any other five year period since 1911. It's not indicated in totals on the exhibit, but it is true that the annual balance, for surplus, from 1922 to '26 inclusive, was $4,734,167.00 which was the highest of any five year period since 1911.

It appears that in two years, 1913 and 1918, dividends were paid although not actually earned.

I believe that there is a correction to that statement in the year 1913 on account of the calendar period. I am not just sure what the total amount paid on the calendar year 1913 as against the total annual balance in the calendar year 1913 was, and whether that conforms literally to the statement I made.

Q. Mr. Wolf, does that exhibit show that before the war the company was or was not able to earn the one million dollar balance to surplus? A. It shows that only in one year, 1916, was it able to earn anything like a million dollars.

Q. Then it becomes apparent when we talk about a one million dollar balance surplus we are talking about something that didn't exist before or since the war? A. That's right.

Q. Although in the latter period a nearer approach was made to the figure than before the war? A. That's right, and an increasing amount has been set aside for surplus for each year since 1920.

Q. Is there anything further you want to say in explanation of that exhibit? A. The second column, cumulative average, may be of interest, simply to bear out the statement I just made that the amount has been increasing in the last few years.

Q. The year 1920 was the best year that the company ever had, wasn't it? A. That's right.

Q. And that shows that the million dollars was barely made, doesn't it? A. That's right.

Q. And that was right after the fare increase in 1919? Have you prepared an exhibit entitled "Chart Showing

Comparison of Living Costs with Carfare and Wages of Trainmen in Baltimore"? A. I have.

(Mr. Tingley) I ask that that be introduced in evidence and marked People's Counsel Exhibit No. 8.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Exhibit No. 8.

(The Witness) The index figures on this chart as shown in the left hand column all refer to 1913 as the basis of 100. Data for this chart was taken from the United States Bureau of Labor Statistics for all commodities and for retail food costs were taken from the actual experience of the company for wages of platform men, showing the maximum hourly wage, and were taken from the actual experience of the company for the average fare paid.

This exhibit shows that the average fares at the present time, the average fare is slightly below the index of retail costs and of all commodity costs, but that if a ten cent fare were granted it would put the carfare much above the cost of living and hence place the company in a much better economic condition relatively than other purchasers of commodities in the city.

It shows that the wages of platform men, and I understand that clerks in the company follow the wages of the platform men generally, lag somewhat behind the living costs up to 1920, but that since that time, while living costs went down, and afterwards remained fairly constant, the wages of platform men have been increasing, and with the proposed increase will place the men far above the economic situation of other commodity purchasers in the city.

Q. This exhibit would bear out the statement contained in the trolley news that was read from yesterday to the effect that the wages of the men are now above the cost of living, wasn't it? A. That's right.

Q. Anything further that you want to add in explanation of that exhibit, Mr. Wolf? A. I think not.

Q. Have you prepared an exhibit entitled "Average decrease of receipts by days of the week"? A. I have.

(Mr. Tingley) I ask that that be introduced into evidence and marked People's Counsel Exhibit No. 9.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Exhibit No. 9.

(The Witness) This exhibit is prepared from information furnished us by the company as to the receipts for each day for 1927 compared with the corresponding day of the week for 1926. In drawing a comparison we have eliminated holidays and other days which were not existent in both years so as to attempt to compare only those days which could be properly compared. This exhibit by the way shows the results only up to August first. Not since.

It shows plainly that the decrease in riding has taken place most largely on Saturday and on Sunday. Tuesday has shown some greater decrease than the other days with Thursday showing the best day of the week relative to last year.

(Mr. Howard) Based on from January first on, I understand?

(The Witness) January first to August first, year. The chart does indicate that pleasure riding and convenient riding has been reduced to a low point, and that passengers are only taking the street car when they are actually compelled to do so.

It also might be pointed out that while this chart doesn't indicate it that the Weather Bureau reports indicate that Saturdays this year have been relatively worse than Saturdays and Sundays last year. That would also have an effect on the Saturday and Sunday business.

Q. Mr. Wolf, would you say that that chart indicated some possibility of some fare adjustment to encourage riding on slack days? A. I think there is a lot of food for thought in that remark.

Q. And the slack days are apparently the week-ends and holidays? A. That's right. Week-ends. The holidays are not shown here.

Q. This would indicate the necessity of attracting the pleasure rider and the convenience rider apart from the necessitious rider, wouldn't it? A. That's right. It indicates the advisability of attempting to do that.

Q. Mr. Wolf, have you any other testimony or exhibits that you wish to put in evidence? A. That's all of the exhibits that I have prepared.

Q. I think there is one other exhibit, isn't there? A. I might put in as an exhibit the August report of the Industrial Bureau of the Baltimore Association of Commerce, which Mr. Emmons referred to in his testimony, and I would like to read this opening paragraph. This dated September 7th and is report No. 99 of the Baltimore Association of Commerce:

"A definite upward trend from the seasonal slowing down of industry during the summer months is indicated in the unusual number of expansions already under way or planned this fall."

And there are several figures also in there that I think are of interest. On page 8 of the report is shown a comparison of telephone calls this year as against last year, these being the local calls, and shows that in July there was the largest increase, namely 2.12% of any month in the year. The other months of 1927 were not very far off from the other months of 1926.

The postoffice receipts shown on page are also rather illuminating, showing that for July for 1927 there was a falling off of 2.57%. This loss was recouped in August, when an increase of 6.35% is shown.

I would like to read the summary of this report which brings together these figures and is shown on page 11 of the report:

"Local trade barometers noted in the foregoing pages may be summarized as follows: for August of this year, as against August 1926: bank clearings lost 3.9 per cent. debts to individual account were lower by 2.8 per cent. the value of building permits was lower larger by per cent.; building contracts lost 53.39 per cent.; 104 fewer steamships entered the local port; postoffice re-

ceipts were larger by 6.3 per cent.; July figures show the number of telephone calls fewer by 2.1 per cent. than for July, 1926; electric power supplied to local industries gained 1 per cent.; industrial and commercial gas consumption increased by 4.9 per cent.; street car passengers were fewer by 4.2 per cent.; exports for June were larger in value by 6.8 per cent.; while imports were also greater in value by 2.7 per cent. than for the corresponding month of last year."

As I read that bulletin I gather the distinct impression that in August and earlier in the season we were facing a seasonal loss, and the indication is now that we have passed the low mark on that seasonal decline.

NOTE: Paper above referred to is here filed in evidence and marked People's Counsel Exhibit No. 10.

Q. Have you any data that would indicate the rate of decline in the sales of merchandise in the month of July and any explanation of the decline? A. The United States Daily for Wednesday, August 31, contained an article on page 7 headed "Reduction is Caused in July Retail Trade by Seasonal Decline," and it goes on to state some rather interesting points. The sub-head is "Department Store Sales Averaged 3.7 Per Cent. Smaller in Same Month Last Year." This is starting by July:

"The usual seasonal decline affected the retail merchandising trade in July, according to a final report for the month made public August 30, by the Federal Reserve Board, which based its statement on reports from chain department and mail order stores.

Part of the reduction recorded for the month was attributable the Board explained to the fact that five Sundays occurred in the month of July this year, consequently allowing one less business day."

And it goes on to quote the Board's report which has been summarized in the heading and in the statement I have already read.

NOTE: Paper above referred to is here filed in evidence and marked People's Counsel Exhibit No. 11.

Q. Mr. Wolf, have you anything further that you wish to add to your testimony? A. I would just like to add one or two statements from the July report of the Industrial Bureau of the Baltimore Association of Commerce, one particularly I thought was interesting to this effect. A slowing down in building construction has been responsible in part for some local unemployment especially among the unskilled workers. That's interesting in view of the fact that there seems to be an upward trend in the building conditions in the city just very recently.

(Mr. Tingley) Mr. Wolf is with you for cross-examination, gentlemen.

CROSS-EXAMINATION.

By Mr. Benson:

Q. Mr. Wolf under your statement Exhibit No. 2 if the increase were made to a ten cent rate, on either one of your figures of decrease of passengers, either the five or ten there would be plenty of net income left over to give the Halethorpe or No. 3 line a single fare without jeopardizing or hurting seriously the United Railways? A. Senator, I haven't made a study to know what the cost of that would be, I might answer your question this way, that I think there would be leeway in the net income of the company for other adjustments.

Q. Well, they extended nine other lines on a half cent increase, didn't they? A. Yes, sir.

Q. Well, if they extended nine on a half cent increase, they ought to be able to extend this one on a two and a half cent increase? A. There would appear to be logic in that reasoning.

Q. If that isn't so then we are carrying a good deal more than our share of the burden now, aren't we? A. I don't know. Of course, there are a lot of things to be considered in that. It would certainly look like there was leeway for making adjustments.

(Mr. Benson) Thank you.

CROSS-EXAMINATION (Continued).

By Mr. Howard:

Q. Mr. Wolf, will you refer to your Exhibit No. 1? A. Yes, sir.

Q. That is an exhibit showing your estimate of probable income for the year 1927, isn't it? A. That's right.

Q. You made a correction or alteration in the amount of your estimate as you first filed it when you gave us a copy? A. That's right.

Q. Your first estimate was $849,000 I see and you have reduced that to $781 thousand and odd? A. The error was pointed out by your auditor.

Q. Now you have not included in that this item of increased tax that Mr. Emmons mentioned, have you, $75,000? A. I have included the taxes that were given me as the estimated tax to be paid this year, $467,110 on the property.

Q. You didn't include tho the additional $75,000 that Mr. Emmons mentioned due to the increased assessment? A. I didn't include that, but I would like to make this explanation. I didn't get entirely Mr. Emmons' testimony on it, but as I understand it that tax will be partly made up by a deduction in the tax on the shares on the stock, in other words, the capital stock tax.

Q. What you understood was that if the company can issue and sell some preferred stock to the public it may get a reduction in that owing to the law that's been referred to? A. No, I understood that if the company does and can sell preferred stock, it's total tax as fixed last year, would continue, and that total tax is made up of two parts, the tax on the physical property as assessed by the Appeal Tax Court and the tax on the capital stock as assessed by the State Tax Commission.

Q. Didn't you understand Mr. Emmons to testify that there was an increase that would represent additional taxes this year of $75,000 unless it were obviated by that law? A. Yes, sir, but I don't understand that to be quite the case. I understand that $75,000 is increased tax on

the physical property, but that a large part if not all of it will be obviated by a lower assessment on the capital stock.

Q. You don't understand that that was only if they got the benefit of that law by selling an issue of preferred stock? A. No, sir, I don't understand that the State Tax Commission has yet revised its assessment of the stock of the company. I think it's about 15 million dollars that fixes the total tax which the company pays.

Q. It is not your understanding then any increase in tax such as the item I just mentioned is involved? A. No, sir, none such as that.

Q. You have also allowed something in your calculations for increased power costs, amounting to $120,000 that Mr. Emmons referred to, have you? A. No, sir.

(Mr. Tingley) Will you explain, why you didn't?

(The Witness) Because I don't believe that the increase is proper. I don't think it ought to be paid and I don't think it will be paid this year.

Q. Whether paid this year or not, it will be on account of this year's service, if it is paid? A. It would be, but it would come under this profit and loss adjustment next year.

Q. Wouldn't it be a profit and loss assessment? A. Attributable to this year, but I don't think it ought to be paid.

(Mr. Tingley) It wouldn't affect the present emergency?

(The Witness) No.

Q. You left it out then on account of your opinion that it ought to be disputed? A. Yes, sir.

Q. Now you have not made any allowance for the increase in the accident reserve allowance have you? A. Only in this way. In the estimate of 1.02 decrease for operating expenses as against 2.33% decrease in passenger revenue, I believe that I have left some margin for increased accident reserve. I haven't left $120,000 but I have left some percentage.

Q. That is not the accident reserve, but the experience of the company that you are referring to, isn't it? A. That 1.02 was used as the actual experience of the first six months.

Q. Is that without making any adjustment whatever for the accident reserve rate? A. That's right.

Q. Now the amount referred to in connection with accident reserve was $120,000, wasn't it? A. $120,000, yes.

Q. Now if you add those three items, which you ignore for the reasons that you have stated, it would make $315,000 difference in your result of $781,440, wouldn't it? A. That's right.

Q. And leave a balance of $446,000 instead of $781,000? A. That's right.

Q. This, as you have already mentioned, your estimate of income for the year 1927 as based on the experience of the first six months? A. That's right.

Q. It's assuming that the experience of the last six months, compared with previous experiences won't be any worse than the average of those whole six months? A. That's right.

Q. And that average of course includes the months of January and February or months before any decline has set in?

(Mr. Tingley) There was a decline in February?

Q. Referring to your Exhibit No. 2, Mr. Wolf, which is your estimate of what the income of the company next year would be on a ten cent cash fare basis, on two assumptions, one on a 5% decrease in passengers and the other on a ten per cent.? Except insofar as you have allowed $100,000 for increase in power, and $50,000 for increased accident reserve, the three items that I referred to under Exhibit No. 1, except to that extent, are not included in this either, are they? A. If I understand your question, I made no increased allowance for taxes. I did make an increased allowance of $100,000 for power and $50,000 for accident reserve.

Q. So that $150,000 is the full amount that you have allowed for the aggregate of those three items? A. That's right.

Q. Would you turn to your Exhibit No. 3 for a moment? This is a tabulation where you were making the effort to do the same thing that the company did by this Exhibit No. 11 of theirs, that is just behind you, that is to say, to find out what effect, if any, the existence and increased use of automobiles has upon the number of street car passengers, isn't it? A. That's right.

Q. And your result is practically the same, or identical with the one that they arrived at, isn't it? A. Very close to it.

Q. Do you remember the Traffic Survey figures that were referred to in Mr. Emmons' testimony? A. Yes.

Q. Do yours agree substantially with those? A. Yes, they do. I used those for a check on my figures.

Q. Perhaps I might make one thing clear. It may be sufficiently clear already, but take the column of per cent. increase in this case, and not the very large amount in the earlier figures; what I want to accentuate is this; that the per cent. is figured in each case on the previous year, isn't it? A. That's right.

Q. So that the figures in the earlier part of that column are figured on a comparatively small existence? A. That's right.

Q. It would be like a geometrical progresssion if it didn't show a diminution as you go on, wouldn't it? A. That's what the revenue passengers showed thru a geometrical program.

Q. For a very small per cent., tho? A. Smaller per cent., yes.

Q. If you had an increase of 57% appearing a number of years, you would soon reach a figure where the world wouldn't hold the number of automobiles if that went on? A. Of course we thought that when we got to 20%. It might be interesting to point out that from 1918 on, it never got above 20%.

Q. But the column to the left gives you the real actual number? A. That's right.

Q. May I ask you if these figures are not approximately correct?

If you refer again to your Exhibit No. 3, in the column giving the per cent. of increase, if you adopt 1920 as your part, or 100% basis, doesn't the amount that you arrived at of automobile riders in 1927, represent an increase of 169% about over that or 269%? A. 268, I believe.

Q. Would you turn to your Exhibit No. 4? Your Exhibit No. 4 is a comparison of the amount of outstanding securities of the United on the valuation found by the Commission? A. That's right.

Q. Assuming the latter to be $70,000,000 without the allowance for easements, that you made in another place? A. That's right.

Q. Now your figures of outstanding securities are for December 31st, 1926, aren't they? A. That's right.

Q. The $70,000,000 valuation eliminating easements, that you have adopted is for the year 1924, isn't it? A. That's right, January 1st.

Q. So you didn't bring that valuation up to the same date that you adopted for the securities in that table, did you? A. No, the securities, if you will revert back to January 1, 1924, were very little different than those shown in this table, and the percentage as of January 1, 1924, would have been only slightly different, from the percentages that I have used here.

Q. But you are trying to give a comparison as it was in the present time, that was December 1st, 1926, and if you had brought the valuation up to that date it would have shown a considerable increase, wouldn't it? A. Not considerable. It would show a slight increase.

Q. What did you allow in the other case? A. Two and a half million, but if you get 96.7% as the ratio of your total bonds and miscellaneous obligations to your

rate base, that extra two and a half million dollars on the basic value wouldn't make much difference.

Q. Wouldn't it make considerable difference, because you are adding it there, to a difference between 98 and a fraction per cent. and 100, so it's just a point where it would make considerable difference? A. It would be 93½% instead of 96.7%.

I might better have taken December 31st, 1923, as my first column. I showed the two columns so as to show some change.

Q. I only wanted to show that you are comparing a 1923 thing with a 1926 thing? A. That is right.

(The Chairman) What would the difference be, Mr. Wolf?

(The Witness) The ratio of total bonds and miscellaneous obligations, to the $70,000,000 is 96.7% last December. The $72,500,000 would be the 70 million value of today would be 93½%.

It would change that percentage from 96.7 to 93.5.

(Commissioner Harper) How do you arrive at that 72 and a half million? Is that just an approximation?

(The Witness) It's an approximation, but it's very close. As I recall the net additions to property as shown on one of the Company's Exhibits there is about two and a half million dollars.

(The Chairman) Of course that's not considering easements in there at all?

(The Witness) No, sir.

(Commissioner Harper) Hasn't there been a substantial retirement in the lines abandoned?

(The Witness) Yes, sir, and I think it might be said, Senator, that we ought not to figure any of this rate base to actual until we have had a chance to go into that, because we are not sure of the retirements and those questions have to come up for a more thorough investigation.

(Examination suspended.)

NOTE: The Commission then adjourned for the purpose of taking a Recess.

AFTER RECESS.

APPLICANT'S CASE (Continued).

Thereupon—

ALLEN G. HOYT,

a witness of lawful age, produced on behalf of the applicant, having first been duly sworn, according to law, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Markell:

Q. Where do you live, Mr. Hoyt? A. New York City.

Q. What's your business? A. I am Vice-President of the National City Company.

Q. And what's the business of the National City Company? A. They are dealers in investment securities.

Q. And do they deal particularly in public utility securities? A. They do a very large business in public utility securities. The business in which they are interested, either alone or with associates, averages something over one hundred million dollars per annum.

Q. You mean the public utilities business? A. Public utility business.

Q. How long have you been Vice-President of the National City Company? A. I have been with the National City Company since 1916.

Q. And before that what was your business? A. I was a partner of N. W. Halsey & Company, an investment banking concern, which specialized in public utilities.

Q. How long were you with N. W. Halsey & Company? A. Since 1907 to 1916.

Q. So that you have been personally in this business—— A. For over twenty years.

Q. You are familiar in a general way with The United Railways and Electric Company of Baltimore are you not? A. I am.

Q. You are familiar with its annual report? A. Yes.

Q. And its financial conditions? A. In a general way, I am.

Q. And you testified in its valuation case, did you not? A. I did.

Q. In the present case there has been offered in evidence an exhibit, Applicant's Exhibit No. 1, entitled "Decrease in Passenger Revenue." You have seen that exhibit, have you? A. I have.

Q. And there is also an Exhibit No. 8 entitled "Annual Shortage in Net Income," showing a shortage as compared with an estimate for the year 1924 in the Commission's last rate case. You have seen that exhibit? A. I have, yes.

Q. And there is also an exhibit "Amount of Net Income" showing a shortage of a million dollars and shortages from a million and a half dollars, that's No. 9. You have seen that? A. I have.

Q. And there is another exhibit "Amount of Gross Income," Exhibit No. 10, comparing the income with one and one third and one and one half times fixed charges. You have seen that? A. I saw that.

Q. And there has also been offered in evidence, marked Ex. No. 5, a chart showing comparisons of monthly income. You have seen that? A. I did.

Q. And you have also been shown an exhibit marked People's Counsel No. 7, entitled "Balance to Surplus by Years Compared With Common Stock Dividends"? A. I did.

Q. It has been testified in this case that the United Railways and Electric Company has now outstanding two and a half million dollars of three year notes which mature in two and a half years, in addition to its ordinary other funded debt that appears on its annual statements. It's also been testified that the Company now has out-

standing various bank loans on various four months notes maturing from time to time this month, next month and so on, aggregating $1,900,000 in its own name, and then it's an endorser on some $400,000 more notes of the Baltimore Coach Company which is a subsidiary of its own entirely owned by it.

Assuming that testimony to be correct, and making the same assumption as to the particular exhibits that have been brought to your attention, will you tell the Commission in your own way, from your own knowledge of this Company's financial condition generally, I mean from Annual Reports, in the past, plus this specific information that's been brought to your attention in these exhibits, and about the facts in the present time, will you tell the Commission what is your opinion as to the present credit condition of the Company as to whether or not there is an immediate need for relief in the matter of rates in order to preserve the Company's credit condition and consequent ability to give service?

(Mr. Tingley) If the Commission please, I think Mr. Markell may be willing to revise his question to meet the objection. The only thing I object to is the necessity for immediate relief which would tend to bear on the legal question as to whether an emergency existed. I have no objection to his testifying——

(Mr. Howard) Immediate need for relief in order to preserve its credit condition.

(Mr. Markell) We want the Commission to have the facts so you can argue the legal question.

(The Chairman) Go ahead, Mr. Hoyt.

(The Witness) It seems to me, that the Company has arrived at a critical stage from the standpoint of protecting or improving its credit. Even tho the Company had made the same showing that it made last year and the year before its position would be none too comfortable. The earnings for recent months as they have been shown to me seem to indicate a distinct decline in earning power. The margin of earnings above the fixed charges is becoming reduced to a point where it seems to me that the Company will have grave difficulty in fi-

nancing its requirement, in financing its maturing notes, and obligations, and in financing its floating debt.

It seems to me further that if this condition is not immediately corrected the credit of the Company will suffer such a severe blow that it will take a very long period for it to recover from a position in which it will find itself. I think it's reached the breaking point.

Q. Mr. Hoyt, in view of the large proportion of bonded indebtedness that this Company already has, and assuming it to be a fact, as has been testified, that the Company has need to do additional permanent financing to retire part of its floating indebtedness which represents capital expenditures, will you tell the Commission what kind of financing is desirable in order to avoid accentuating or is possible to correct that ratio or bonded debt? A. The Company at present has what we term an unbalanced financial structure. Its ratio of debt to stock is too large for the Company to endure good credit. There should be a greater proportion of stock, a greater equity above the funded debt, and it seems to me that the Company's endeavor should be, whenever its credit will permit it to do so, to finance by issuing stock in order to improve the ratio of equity securities to those bearing a fixed charge.

Q. Now, Mr. Hoyt, what in your judgment would be the effect of the chances of doing preferred stock financing if this Company were compelled to pass a dividend at this time? A. I think it would make the likelihood of financing by preferred stock extremely remote if the Company were to pass its dividend or if the Company were to show such poor earnings that the amount applicable to dividends was not equal to that necessary to pay dividends at the current rate.

Q. Would it be worse to pass a dividend than to pay it out of surplus? A. Possibly so.

Q. Would it be bad either way? A. Bad either way and very bad in my opinion.

Q. When investors and financial students review that past of a Company they are apt to look at what periods? A. Usually reports for certain fiscal years. Sometimes

a fiscal year coincides with the calendar year. Sometimes it's different period. The twelve months' period ending with the fiscal year.

Q. Now this Company's fiscal year is the calendar year. Will you tell the Commission what in your opinion would be the possibility of doing preferred stock financing in this calendar year goes by without material relief to improve the showing that's already been indicated by the exhibits submitted? A. The record of the Company for the year to date indicates that unless relief is granted the showing for the calendar year 1927 will bear a very unfavorable comparison with the calendar year 1926. The financial manuals and records are published and carry these annual reports. When any investor or officer of a financial institution desires to obtain general information regarding the securities of any company which may be submitted to him he usually refers to certain manuals and he looks over the record of the Company, and this records as I say records of fiscal years, annual years. If we will say two or three years hence the securities of this Company would be presented for consideration to a prospective investor, and he turned back to his manual and saw that very sharp decline in earnings after prior years that had been none too good, I would say that his confidence in the situation might be very severely shaken, and that he would be inclined any way to question the advisability of putting his money in an undertaking which had had such an unfavorable record.

Q. Now, just one more question, Mr. Hoyt. If investors were going to buy or build a property like this Company, what amount would they feel in your opinion, that the property should earn in order to induce them to invest their money in the purchase or construction of such a property? A. I should think that they would have to have an expectation of at least 8% to induce them to make the purchase or contract the property.

(Mr. Markell) That's all, the witness is with you.

CROSS-EXAMINATION.

By Mr. Tingley:

Q. What period of time did you have in mind in stating that the Company might have some difficulty in meeting its obligations? A. When they come due.

Q. During what period in the future, I mean, the next month, the next two months, the next year? A. Unless the Company is afforded some relief, I should say that its credit will suffer a severe set back, and whenever it became necessary for it to raise money, it would have great difficulty in doing it, however.

Q. What period have you in mind as to the obligations that it will be embarrassed in meeting? Obligations maturing during what period? A. Well, the Company as I understand it has quite a substantial floating debt. I should think that the creditors would begin to feel restive today. I know our bank would.

Q. How much of that floating debt will mature during the next two months? A. I can't say as to that.

Q. So that in stating that the Company might have difficulty in meeting its obligations, you don't have the next two months' period in mind? A. Not particularly. It's the affect of the next months without relief that would be difficult without.

Q. In the Company's credit situation as stated, you base your answer in part upon the correctness of certain companies' exhibits that were furnished to you? A. Yes.

Q. Any error in those exhibits might also affect your answer? A. It would have some affect on my answer because I took them as being correct.

(Mr. Tingley) That's all.

CROSS-EXAMINATION.

By Mr. Clark:

Q. Mr. Hoyt, what did I understand you to say about the policy of the Company in continuing its dividend policy in the face of declining business? A. I said that if

the Company failed to earn the dividend and paid it or if the Company failed to declare, their dividend would have a further severe affect upon its credit. A continuing dividend record of course improves the credit of the Company.

Q. Did I understand you to say that it is better for a Company to pay its dividend out of surplus than to pass dividends if not earned? A. I would say that the affect of not earning and not paying might be somewhat more severe than not earning, but still paying out of accumulated surplus.

Q. Speaking from the viewpoint of a bondholder, what policy do you think would be to your interest? A. It's a rather close question. I think it's worthwhile if a Company is convinced that the period of inadequate earnings is to be a very short one, to continue a dividend policy, that it had been following a number of years, rather than to pass it for the reason I have mentioned; that a good dividend record improves the credit of the Company and helps to improve the price at which the bond is selling.

On the other hand, if the Company failed to earn a dividend and it saw no hope of earning it for a number of years, then it would be better in the interest of the bond holder to cut that dividend off and conserve its resources. It depends upon whether at the time this question comes up and there is a deficit in earnings as compared to the amount necessary to pay the dividend is regarded by the management as strictly a temporary matter or a matter that's likely to stay some time, in my opinion.

Q. Now speaking from the viewpoint of a prospective offer of a preferred stock it would absolutely be necessary to show higher earnings? A. I should think so.

Q. But so far as the bond holder is concerned, his position is strengthened if the dividends are suspended, rather than paid out of surplus? A. That doesn't necessarily follow. It might be as if the money that might have gone to dividends was invested in the fixed property of the Company and increase the corpus on which you have got a lien, of course you have more property behind your bonds than you have not, but if that sum is held for

working capital and your interest on your floating debt absorbs it later on, the bond holder isn't any better off then.

Q. In the case of a Company like the United, where the earnings never very far exceed dividend requirements, do you or not think it would be good policy to carry those excess earnings, when they are earned to an equalization or a dividend reserve rather than put into physical property? In other words, carried to surplus? A. If it is invested in additional physical property, in substance, that is a reserve for dividends. It would be very foolish for a Company to take the money, the excess above the dividend paid out, we will say, and invest it, in government bonds on which it could earn only a small percent, whereas if it invested it in its own property, it would earn considerably more than that.

Q. But I am talking about a case where it's desired policy is to maintain their dividends, but they are always close to the line, and probably carry $100,000 maybe $50,000 and sometimes $150,000 over to the corporate surplus, which when put into a dividend reserve and carried in interest-bearing securities in liquid form so as to protect them during years when they fall a few thousand dollars short of dividend requirements, would that be or not a good policy? A. I should think it would be a very questionable policy.

Q. It's done, isn't it? A. I don't think it's done particularly for that purpose, except perhaps some industrial concern that has a very large earning in one year and in the next year it is not likely to equal those earnings. It might invest some of its means in marketable securities. It has an excess of working capital and therefore it invests in securities in order to get a higher return than on bank loans, but in public utilities, I don't know of any company that has built up a dividend reserve, and invested it in securities that are earmarked particularly for that purpose.

Q. Mr. Hoyt, don't you know it to be a fact that it is what the Company is earning that strengthens or weakens its credit and not what it is paying on its common stock? A. I think the earnings are of more importance than the dividends paid. I will agree with you.

Q. Wouldn't it strengthen the bond holder and strengthen the credit, the borrowing power of the Company, if the Company were to suspend dividend payments on the common stock and increase its surplus until earnings improved? A. It's somewhat doubtful in my mind whether that would be the case or not, because the market valuable of the equity above your bonded debt under such conditions would be so small that the bond buyer would say there isn't very much here to protect me, and it's a close question, but I think it is somewhat desirable to create a market value for the equity as large as a company reasonably may under conservative management, by paying a reasonable part of its surplus earnings out in dividends.

RE-DIRECT EXAMINATION.

By Mr. Markell:

Q. Mr. Hoyt, do you think a Company that's already overloaded with bonds, and this Company is, can permanently continue buying without making any effort to do stock financing? A. I should think it would be very doubtful if its capital requirements are substantial.

Q. Wouldn't the policy of passing dividends defer stock financing to the indefinite future? A. It might have that tendency.

Q. Now I call your attention to this People's Counsel Exhibit No. 7 that you already had called to your attention. I also show you People's Counsel Exhibit No. 6, which is a list of securities issued by this Company in 1911. I ask you to direct your attention to the kind of finances and the rate of interest on some of this financing, as well as the earnings and dividends that are shown in the years covered by these exhibits and I will ask you to assume the testimony that's already been mentioned, that this Company now has outstanding two and a half million dollars of three-year notes that mature in two and a half years, and $1,901,000 of its own unfunded debt plus $400,000 of its subsidiary, and ask you to tell the Commission how you think that Company could have kept a liquid dividend reserve while it was in that financial condition, or where it was going to get the money to do it? A. Well,

of course, I suppose that the amount paid out in dividend might have been put in some sort of reserve instead of paid out.

Q. I mean with reference to the questions that were put to you about investing surplus in property, as to keeping it liquid instead of investing it in property? A. This surplus above the dividend paid out has the Company taken that surplus and put it in a reserve and in marketable securities it would have increased the amount which it would have had to borrow by issuing notes or going to banks and at a very high rate.

Q. It would increase its floating debt at a high rate and would have had liquid investments at a low rate? A. That's quite true.

Q. Will you tell the Commission whether you think that would have been a wise policy? A. I do not. I think it would have been very unwise.

CROSS-EXAMINATION

By Mr. Clark:

Q. It wouldn't have increased it very much, would it? A. Several hundred thousands of dollars, I don't know how much.

Q. Mr. Hoyt, when you are approached for an opinion from your investors with respect to the standing of a particular Company, we will say a utility such as the United, are the factors which you have considered today the only factors which you take into consideration? A. How is that?

Q. Are the factors, capital and operating, which you have considered today, the only factors which you take into consideration in advising your clients? A. I don't exactly understand what your question means. Of course, we consider not only the existing conditions, but the history and the prospects as far as we are enable to judge them.

Q. Yes. Now if it happens to be a railway company you investigate the operating ratio, don't you? A. We do, yes.

Q. And the United would show up very favorably, wouldn't they? A. I think it's better than the average.

Q. You would investigate the gross income per car-mile, wouldn't you? A. Yes, we would.

Q. And that would also show up favorably wouldn't it? A. I haven't seen the figures on that recently.

Q. Well they would figure in your calculation? A. They would.

Q. Then just as soon as you reached the high debt ratio, the red flag would go up, would it not? A. It would make us proceed with caution.

Q. And that big debt ratio altho the earnings are large per car-mile, would enable you to distribute those earnings in a way that would look very unfavorable to an investor? A. A very large proportion would be absorbed in the fixed charge. That's quite true.

Q. So the real trouble with the United is chiefly it's capital structure? A. When you say the real trouble that depends. Here is a very large investment, and no matter how the securities are represented apparently this large investment is obtaining a very inadequate return.

CROSS-EXAMINATION (CONT'D.)

By Mr. Toole:

Q. Why is it that railway companies do not reduce their bonded debt? A. Many of them have. They have been thru a receivership and come out of it with a smaller debt.

Q. Then the better way is to go thru a receivership to get rid of this bonded debt? A. Not necessarily. A receivership is usually accompanied by very inadequate service, very bad management and a very bad name for the city.

Q. But wouldn't that get rid of that dreadful debt sometime? A. I don't know whether it would or not.

Q. But it would in a way, wouldn't it? A. It would, in a way.

Q. Don't you think it is better when Companies are in

good condition, running well and making money, that they would retire their debt? A. No public utility earns enough so it can amortize a substantial part of its debt.

Q. They don't earn enough? A. No, they don't earn enough. No public utility that I know of.

Q. I don't know very much about this thing, but is it not true that these bonded debts are left stand so that the bond holders may have a good investment and continue to draw their investment? A. They are let stand because the stockholder and I presume that that represents an investment, doesn't want to lose his investment.

Q. Either you don't understand what I am talking about, or I don't. What I mean is, here is a company doing pretty well, making money, protected by many decisions of the highest court, it must earn a certain amount of money and all of that, you understand? Now isn't that a good investment? A. You said that it must earn. I said it's not earning.

Q. Now I am assuming a Company that is earning now. Isn't that a good Company to invest in? A. If it had a good record and good prospects, yes.

Q. Then it's a good thing for bond holders to keep their money in a little Company? A. Yes.

Q. All bond holders don't want them paid off, do they? A. Not if they are bearing a reasonable rate of interest and they could not reinvest the money to better advantage, they would prefer to leave in where it is.

Q. And don't you think that that has something to do with the fact that all railways companies usually never pay off their bonded debt? A. Well the question is whether a railway company, by paying it off, could borrow it more cheaply in some other form. That's merely good business.

Q. I know it is, but if you can borrow cheaper, why borrow at all? A. You can't pay it off, in my opinion, out of earnings.

Q. I am somewhat bonded myself. I have got a mortgage on my house, and I have been trying to pay it off, and I don't see no excuse for making another mortgage

to pay that money off, yet that's the practice of the railway company? A. Yes.

Q. To borrow to pay off and borrow to pay off? A. That's right.

Q. And every time another group makes more profit? A. Here is the point. It's rather technical, but I will tell you what the point is really. These public utilities are entitled to earn a certain return upon their property. We will assume 8%. They couldn't get along with that 8% unless they could borrow a part of the money they need under the 8% up to 40%.

Q. But if they would set aside a sinking fund and retire those bonds—let us assume that the United Railway Company years ago, when they were making lots of money, assuming it did.

(Mr. Markell) But it didn't.

Q. Suppose you get 10 cents. According to the figures presented here they were going to make a pile of money. Now wouldn't it be to the advantage of the Company in such an event to have a sinking fund, to pay off that bonded debt? A. Well, I will tell you how that works out. The Company has got to spend or would like to spend, we will assume, four or five million dollars a year for additional property or improvements or what not.

Q. You meant that they get it cheaper by borrowing it than by selling bonds? A. But if they take the money that they have and retire some 4% bonds, and then the next week go out and borrow it at 5 and a half or six, it's poor business.

(Mr. Toole) Well I guess we will have to let it stay there.

CROSS-EXAMINATION

By Mr. Clark:

Q. Mr. Hoyt, I was speaking of the ratio of debt to total capitalization. Now when the ratio of debt to valuation is about 69 to 75, 69 million being debt including notes, and 75 million valuation, that's a very unfavorable position for the company to be in from a financial viewpoint, isn't it? A. That's quite true.

Q. And that is really the stumbling block in handling the securities of the United, isn't it? A. Not necessarily.

Q. I mean the additional securities. A. Suppose the debt was very low. Unless your Company had a record of prosperity, and of prospects, I think it would be difficult to sell its bond at a good figure, even if the debt were only 30 or 40 million, but that accentuates it.

Q. And it's a difficulty in financing? A. Yes.

Q. A difficulty which probably if you were absolutely disinterested, a difficulty which could not be overcome in advising your clients? A. I don't say that it could not be overcome. If this Company was a prosperous company it could arrange, I think, an exchange of debt for preferred stock, or something of that kind, which would overcome it.

Q. But the position of the Company is not that they are applying for this increase for the purpose of issuing preferred stock. That's all, Mr. Hoyt.

(Examination concluded.)

Thereupon—

JOHN J. NELLIGAN,

a witness of lawful age, produced on behalf of the Applicant, having first been duly sworn according to law, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Howard:

Q. Mr. Nelligan, you are the President of the Safe Deposit and Trust Company of Baltimore, aren't you? A. Yes, sir.

Q. How long have you been President and how long have you been connected with that institution? A. I have been President twelve years. I have been with the institution about forty.

Q. Now, during the time that you have been with the

institution, has your attention been devoted in any way to the study of companies which are the subject of investment? A. Yes, sir.

Q. Explain briefly to the Commission how far you have studied such matters, to what purpose? A. Of course our principal business is buying for trust estates, making investments for trust estates, and naturally when we come to make an investment, we examine all the available data, first the financial condition, the character of the property, the earnings. We don't buy stocks. It's an important thing for us to know something about the leeway of earnings over and above fixed charges.

Q. So is it not your duty from time to time and has it not been your practice to make a study of companies whose investments are offered?

Q. Including Public Utilities companies? A. Yes, sir.

Q. Many of those? A. Well, not a great many.

Q. They are included though? A. Yes.

Q. And in reference to companies in this city, your attention has frequently been directed to the United Railways and Electric Company of Baltimore, hasn't it. A. Yes, sir.

Q. Hasn't it been brought to your attention so as to keep yourself posted, in a general way, on its condition? A. It has.

Q. And its financial condition? A. Yes, sir.

Q. You familiarize yourself to some extent with its annual reports as they come out? A. Yes.

Q. And matters of that kind? A. Yes, sir.

Q. In a general way then do you know what makes good credit for a Company and what makes bad credit? A. Yes.

Q. And what the affect on a company's credit may be? Current and hence? A. Yes.

Q. You have seen the same exhibits that Mr. Hoyt testified had been shown him in this case with the possible ex-

ception I believe of the People's Counsel exhibit which I may mention later? A. Yes.

Q. Have you examined those? A. Yes, sir.

Q. Now will you tell the Commission whether from your knowledge of this Company, generally, and from information disclosed by those exhibits, whether or not the present situation is one that shows any danger to its credit standing unless some relief is given. A. I think that the present condition of the United Railways financially is really serious from our standpoint. A company having bank notes of two and a half million dollars, which is a quick come due thing, is a very dangerous situation. Unless that can be financed into some form of investment, which won't have a fixed interest obligation on it, I don't see where they are going to get the money.

Q. What is the affect of its credit situation as to earnings during the recent period shown by these exhibits that you have seen? A. Well for the years 1925 and '26, they made a favorable report, and our comparison of what the company done in the way of earnings, it looked pretty good.

Early in 1927 the information we had was gross earnings were going back, and that continued I believe for each month of this year. Well 3% decline in gross, if kept up, means that half of the surplus that they had last year would be wiped out. So it seemed to me that the situation was quite serious and was entitled to have some relief.

Q. So then I understand that in your opinion the situation which presented is a serious one? And one that may seriously affect the credit situation of the Company unless it is promptly relieved against? A. I do.

Q. What is the total amount of investments that your Company holds or controls? Can you remember approximately? A. At the book value which we are carrying, which is less than the actual value, I think it is about two hundred and thirty million dollars.

Q. And it is in connection with watching those invest-

ments and making new ones that your duty in posting yourself on the credit situation of companies principally arises, isn't it? A. Yes, sir.

CROSS EXAMINATION

By Mr. Tingley:

Q. Mr. Nelligan, has the Safe Deposit and Trust Company loaned any money to the United Railways and Electric Company? A. No, sir.

(Mr. Clark) One time I was told that you wouldn't do it?

(The Witness) I wouldn't like to be a lender today.

(Examination concluded.)

(Commissioner Harper) That closes your case?

(Mr. Howard) That closes our case.

PEOPLE'S COUNSEL'S CASE CONTINUED

Thereupon—

H. CARL WOLF,

a witness of lawful age, produced on behalf of the public Service Commission of Maryland, having heretofore been duly sworn, according to law, and whose examination was suspended for the purpose of hearing two witnesses on behalf of the Applicant, resumed the stand, was examined and testified as follows:

CROSS EXAMINATION.

(Continued).

By Mr. Howard:

Q. Mr. Wolf, your memory is probably better than mine. I think Exhibit No. 4 was the last one, wasn't it?

(Mr. Tingley) That was it.

Q. I will ask you to look just a moment at Ex. No. 5.

That is comparison of street railway operations in a certain number of different cities, isn't it?

Q. The next to the last city there is Indianapolis, isn't it? A. That's right.

Q. The amount in the next to the last column, should not that be the amount in the second column, divided by the amount in the first column of figures? A. It should.

Q. Isn't there a mistake in your arithmetic? Oughtn't that column to be about $81,800, instead of $56,300? A. Apparently it should.

Q. The mistake is probably in the arithmetic merely, isn't it? A. Yes.

(Mr. Tingley) Mr. Howard, we found one mathematical error, in your exhibits, but we didn't say anything about it because it was in our favor.

(Mr. Howard) Errors of that kind will happen and I don't claim any general inaccuracy. I simply want to get the table right.

(Mr. Tingley) That still makes that figures only about one half of the Baltimore figure, doesn't it, Mr. Wolf?

(The Witness) Yes.

Q. It raises it considerable, tho, doesn't it? A. Yes, but it is still considerably below Baltimore.

Q. Where did you get your figures for Pittsburgh? A. I think those all came out of the American Electric Railway Association bulletins No. 145 and No. 148.

Q. I think they are subject to correction? A. It may have been Moody's Manual.

Q. Exhibit No. 6, Mr. Wolf. That a tabulation of securities issued according to the records here since 1910, isn't it? A. That's right.

Q. I think it was already explained, wasn't it, that the last item there, those three notes were not issued in July, they are really issued in March? A. That's right.

Q. Because I believe Mr. Tingley had an exhibit showing overlap of interest during that period? A. That's right.

Q. Ex. No. 7 I have no questions to ask. I will ask you one thing about ex. number 8? In your line of average fares there, which are the correct points and which are merely the connecting lines? A. The correct points are taken off the heavy lines, to show the average fare for that year. The dots on the lines are simply to make it a broken line.

Q. What I mean is that anyone looking at this table might think that the beginning of 1917, a rise began and continued until the beginning of the year 1918? A. Oh, I think not. I think it's apparent that the line simply joins the averages for the year.

Q. In other words, the line is a mere joining line? A. That's right. The same thing is true of the other costs. The retail food cost.

Q. Ex. No. 9 is the new exhibit that hasn't been furnished to us before, isn't it? A. That's right.

Q. It's an attempt to figure what days of the week these shrinkage in receipts are principally attributable to, isn't that it? A. That's right.

(Mr. Howard) I think I have nothing to ask about that.

REDIRECT EXAMINATION

By Mr. Tingley:

Q. Mr. Wolf, in connection with exhibit No. 1, do you think that it would be proper to add the items that Mr. Howard referred to that were eliminated from your exhibit? A. I do not.

Q. As to Exhibit No. 2 do you think that the accident reserve and the power charge should be larger than is shown in the exhibit? A. I do not.

(The Chairman) Mr. Tingley has just mentioned something about which I have been somewhat confused. Mr. Emmons testified I think to a power charge, an in-

creased power charge of $120,000. When Mr. Wolf was questioned by Mr. Howard on that matter, as to whether he had figured that in he said he had not and did not think it should be allowed.

Now my understanding of the power contract situation was that the United Railways would pay about $30,000 more a year this year than it did last under the new contract, than it did under the old contract, certainly for the first year or so. I would like to have you explain, Mr. Wolf, just what you mean by saying that it should not be allowed,

(The Witness) This $120,000 to which Mr. Emmons referred is a matter of controversy between themselves and Mr. Wagner of the Gas Company, as I understand. The contract under which the Company is now working is laid on the basic principle of cost plus profit, that cost being the cost of generating current, the cost to the Consolidated of generating current, plus the cost of the use of its property.

There is also a clause in that contract which states that the United shall get at least as good a rate as any other customer of the Gas Company.

In my estimation if the present rate is increased, the United will not be getting that. The copper works now gets a considerable better rate than the United, and when that rate is adjusted for all the conditions for which it can be adjusted it is still lower than the United's present rate. Now that one condition that cannot be adjusted is the condition by which the Copper Works can be cut off in case of emergency, whereas the United supposedly cannot. The United is supposed to have priority, so for that priority the United is now paying, as I estimated it some time back, about one mill and in my estimation that's as much as they should pay, and even more than they should pay for that privilege.

Now with the power economy measures that the United have had under way and which have been very fine and very commendable, in my estimation the load of the United has been decreased. It's load, both its maximum demand and its kilowatt hours so that the proportion

of its use of the Consolidated's plant has correspondingly decreased, so with that thought in mind I can't see but what the power costs to the United ought to be no greater and perhaps even less than they have been.

(Mr. Emmons) Mr. Chairman, may I just get that thing straight about that. We are supposed under the contract not to have a higher rate than any other person operating under similar conditions. The Copper Works, we know is a constant load. Our load is a very heavy peak, and another heavy peak, so that the conditions are not the same. The point of the increased rate of $120,000 is made up in this way. Probably the load is less. The very fact that we have a less load make the load less in Westport and increased the per Kilowatt hour costs. We have started in this year figuring the old years rate of 9.36 because their cost increased per KW due to our lower kilowatt consumption, consequently there is an increased cost per KW for the power that already has been used, plus the power that is yet to be used, which makes $120,000.

(The Chairman) Mr. Wolf, you mentioned a moment ago the possibility of a condition under which the Copper Works could be cut off,

(The Witness) Yes, sir.

(The Chairman) Is there any conceivable condition under which the Consolidated Gas Company would cut off the service of a customer like the Copper Works or of any other customer, it makes money on its contract. It is in business for supplying power.

(The Witness) The same efforts are put forth, as near as I can determine by the Consolidated to keep the Copper Works on its line, as it puts forth to keep any other customers on its lines. I think there was one time when the Copper Works, was disconnected before other customers. That was a time in an emergency, when a large number of other customers were disconnected, the Copper Company being the first, but that was only for a few moments, but perhaps two minutes.

(Mr. Tingley) Isn't it true that that was a cut off before the Golds Street Plant, and not since?

(The Witness) I think only once in the history of the Company.

(The Chairman) I should assume that the only reason for cutting off any customer, large or small, would be some purpose of the Company itself in shifting over for one thing or another, which would probably be momentary, and my understanding is that the service of the United has been stopped for one reason or another, or by some accident, or catastrophe, which would cause the Gas Company to shut down a part of its plant.

(The Witness) In the case of an accident, all customers of course are liable to be treated alike. There would be no choice. In the case of a limited power supply, which happened on this one occasion, there had to be a choice made as between customers to be cut off in order to reduce the demand to the available supply for the course of a minute or so, and at that time the Copper Works was cut off.

I might say there has been very close co-operation between the United people and the Consolidated people in maintaining a constant power supply to the United because they know it's important to the public of Baltimore.

(The Chairman) It was the Commission's understanding with Mr. Wagner, an informal understanding, that the bill of the United would be about $30,000 more.
I think there was some testimony in the case recently to that effect?

(The Witness) Yes, sir. I think perhaps, Mr. Chairman, that situation,—Mr. Wagner's statement based on those conditions would change the day. What he was referring to at that time, as I recall it, was the increase to the Consolidated of the cost of hydro current, the price that the Consolidated was to pay for that current in question. He pointed out, as I recall it, that that increased price would only mean about $30,000 to the power cost of the United. Since that time Gould Street has

come into operation and it has shown even better results than they anticipated, and I believe offset that $30,000.

(Mr. Howard) If I understand then the reason for thinking that element be eliminated is because in your opinion, of the most favored customer clause in the contract of the United, they ought to be able to get as good a rate as the Baltimore Copper Company?

(The Witness) I say they ought to be able to get closer to the rate of the Baltimore Copper Works than they do now.

(Mr. Howard) If the clause operated at all they ought to have the same rate?

(The Witness) I can see where the Copper Works might get some advantage.

(The Chairman) I think Mr. Emmons just pointed that out, that the Copper works had an absolutely steady load and the United had a fluctuating load, but at the same time, according to Mr. Wolf's statement, those conditions were adjusted, and after adjustment of those conditions, it resulted in about a mill higher price to the United than to the Copper Company.

(Mr. Howard) Nevertheless a situation where a customer who agrees that in case of an emergency, he may be shut off first is entitled to a special consideration.

(The Chairman) Of course I suppose that's in the contract, but as a practical matter I can't conceive of the Consolidated shutting down the power, either of the Copper Company or the United Railways Company of any tremendously large user of power if they can possibly help, and the only thing that would bring that about would be something in the nature of a catastrophe.

(Mr. Howard) But the point is this: if they shut down on the United Railways, all the wheels on the street stop running, and it is not a loss of revenue, but of prestige. If they shut down on the copper company, the chemical work is shut down for a while and then resumed as before.

(The Chairman) That's true, but if they shut down

altogether they would shut down the wheels of industries of everything.

(Mr. Howard) Were you with the Commission when the first rate case was tried in 1913 and I represented the Copper Company and everybody claimed that the Copper Company got too low a rate than anyone else, and the Commission considered the difference between its demand and the class of service it got as justifying a very much lower rate, than to any other customer?

(The Witness) No, sir, I wasn't with the Commission at that time, Mr. Howard.

(M.. Howard) I don't believe the present Commission was either, but if they will refer to the records of that case,——

(The Chairman) Wasn't that a case in which the Commission abrogated the contracts?

(Mr. Howard) Not on the ground of the Copper Company, but on the manufacturers. But so far as the relative standing was concerned, it gave special consideration to the Copper Company. The only change made in the Copper Company's contract, was to add the fuel adjustment charge.

(Examination concluded.)

Thereupon—

CHARLES NODDER,

a witness of lawful age, produced on behalf of the Public Service Commission, of Maryland, having first been duly sworn, according to law, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Tingley:

Q. Mr. Nodder, state your full name, please. A. Charles Nodder.

Q. State you official connection with the Public Service Commission? A. Chief Auditor for the Commission.

Q. Mr. Nodder, for purposes of the record will you state your qualifications as a Chief Auditor?

(Mr. Howard) We will admit them, Mr. Tingley.

(Mr. Tingley) I would like to bring them out. He has some particular experience with street railway properties, but if that's conceded, all right.

Q. (By Mr. Tingley) Mr. Nodder, have you made an investigation and prepared some exhibits with reference to the claim of the United Railways and Electric Company that an emergency exists, requiring an immediate temporary increase in fare? A. I have.

Q. Will you state the results of that investigation to the Commission? A. I want to file the first exhibit I have prepared, which is a statement of the income and surplus accounts of the United Railways Company from 1920 to 1926 which I took from the annual reports to the Commission.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Ex. No. 12.

(The Witness) This statement shows the railway operating income and expenses down to the net income return of the United Railways Company for the years 1920 to 1926.

It shows that during the last four years 1923 to 1926, the Company has earned considerably in excess of its dividend requirements. Since 1921, net income has, with one slight exception, 1924, been gradually on the increase, so that at least until December 31st, 1926, the Company seemed to be in a growing healthy condition.

The second half of the statement is an analysis of surplus just briefly stated as shown in the annual report. It shows a surplus at the beginning of the year, the net income brought down for the year, and then other miscellaneous credits made to surplus, and shows the divi-

dend paid, common and preferred, and various other charges against surplus, under other deductions, and the surplus is shown at the end of the year, in the last line. It is to be noted that dividends were to be paid in 1922 on a 2% basis and since then on a 4% basis. The item of dividends preferred, just shows a small amount in 1920, but that's a little hangover when the preferred stock as of that time was retired, so all the statement shows that while no preferred dividend has been paid, that is because there was no preferred stock outstanding. I just mentioned that so that no confusion may exist as to the reason for the preferred stock not being shown as dividend paying.

While speaking on dividends, it has already been brought out in this hearing that three quarterly dividends have been paid so far this year. That includes the dividend that was due and payable August 14th of this year. In other words, dividends in 1927 amounting to $613,836.00 have been paid, altho earnings have not reached more than $400.000.

Apparently an immediate emergency did not exist that would prevent a depletion of the Company's surplus for the payment of dividends.

Further in connection with this dividend business I might say that an examination of the stock exchange sales on the Baltimore Exchange for the last two or three years shows that the prices on the exchange ranged from 16 to 21, averaging less than 20. The last quotation I noticed was two or three days ago at 18 and 7/8's which was day before yesterday, I believe.

These dividend earnings, therefore, or these dividend payments rather, which are 4% on the par value of 50, actually amount to 10% or more on the market value, which is a fairly good return on a stock of that nature.

The statement has been prepared more for the general information of the Commission so that a gradual picture may be shown on the condition of the company up to December 31st, 1926.

(The Chairman) On December 31st, 1926, there were $2,020,000 in surplus.

(The Witness) That's correct. One thing I would like to show is that the net income of the Company has in the last five years, as I have already stated, shows a gradual increase. Considerable has been said in this hearing about fluctuations which have happened in the Company's net income, the inference being that fluctuations instead of being back and forth, were all downward. As a matter of fact the result here shown is that the net income with the exception of one year, 1924, has over that period since 1921, gradually increased.

I spoke just a minute ago of dividends. There occurred to me a suggestion that the Company might think well of in the payment of its dividends, based on a little calculation I made of the result of paying its dividend in one payment per year, at the end of the year, rather than paying it four quarterly installments. If the 1926 dividend had been paid December 31st, 1926, instead of on February 14th, May 14th, August 14 and November 14th, interest at the rate of 6% in the amount of $23,000 would have accrued to the Company which would have been quite a little source of income.

Q. Have you anything to say in connection with that exhibit, as to an increase in operating expenses? A. Yes. It should be noted from this statement that operating expenses practically every year have increased. In spite of so called economies the operating ratio has remained approximately constant. For instance, while it's not shown here on the statement, the calculations can readily be made, that in 1922 the operating ratio was 64.69; in 1923, 64.53; in 1924, 64.66; in 1925, 64.86; in 1926, 64.55. Practically constant.

Now if those operating expenses be based on the car mile basis which is more or less a measure of service rendered, the result of any so called economies of operation disappear.

Q. If I might explain just one thing, that "So called" I think Mr. Nodder used in a sense that some of the items were economies, it wasn't meant as a reflection on

the management of the Company? A. No. I find that in the last few years, operating expenses per car mile, have gradually increased from 29.57 cents in 1924 to 30.17 cents in 1925, and to 30.56 cents in 1926. This condition has not improved either in the seven months ended July 31st. The operating expenses per car mile during the latter periods being 31.08 cents per car mile.

It certainly seems to me that if a real emergency situation existed during this latter period the many efforts made by the management to cut expenses to a minimum necessity should be reflected in the cost per car mile.

Now in arriving at those operating expenses per car mile, I have used these figures. In 1922 the car miles were 34,964,036; operating expenses which includes depreciation $10,429,122, that gives an operating expense per car mile of 29.83 cents.

In 1923 the car miles were 35,873,841 operating expenses, including depreciation, $10,622,402, giving operating expenses per car mile of 29.61c.

In 1924 car miles were 35,973,691, operating expenses, $1,736,925, giving operating expenses per car mile 29.57c.

In 1925, car miles 35,717,666, operating expenses $10,776,811, with operating expenses per car mile of 30.17c.

In 1926, car miles 35,304,583, operating expenses $10,790,804, operating expenses per car mile 30.56c.

For the seven months ended July 31st, 1927, the car miles were 20,133,441, operating expenses, $6,258,381, and of operating expense per car mile of 30.08c.

Q. Does that complete your comment in connection with that exhibit, Mr. Nodder? A. Yes, sir.

Q. Have you prepared an exhibit "Comparison of net income for the first and last year month's period for the years 1920 to 1926?" A. I have.

(Mr. Tingley): I ask that that be introduced in evidence and marked People's Counsel Ex. No. 13.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Ex. No. 13.

Q. Mr. Nodder, will you comment on and explain that exhibit? A. This is an exhibit which shows a comparison of the net income for the first and last half periods of each year from 1920 to 1926.

The first column shows the net income for the year, for which the study is made. The next column shows the net income for the first six months of the year, and the next column for the second six months of the year. From these columns there has been computed a percentage that each of the six months income bears to the total years income. For instance in 1920 the first six months' income represents 44.026% of the total income for the year.

Likewise for the second six months, represents 55.974% of the annual income.

These percents have been in like manner calculated for each year from 1920 to 1926.

From these percentages there has been prepared an average of the various percentages of the first and second half year's income. This average shows that the first six months represents 41.154% of the net income for the year's net income, and the second six months is 58.846% of the year's income.

Now using the average figures as a basis for 1927 income, taking the earnings for the first six months of this year, $347,479.88 will result in a net income for the second six months of this year of $496,860.60, or a total for the year of $844,340.48, which is approximately $26,000 in excess of the Company's dividend requirements, and I might say by dividend requirement, I mean specifically the amount that has been paid in the last few years.

Not that there is any special requirement due.

Now if we take the highest percentage that bears to the total income as shown by the first half of the statement, and apply that to the earnings of the first six months of this year, we find that the second six months' income will become $625,308.14, or a total for the year of $972,788.02.

(The Chairman): That's based on 1922?

(The Witness): That happens to be 1922. Now if, on the other hand, we take the lowest percentage that has happened in those last seven years, the lowest percentage of the second half year's income bears to the total income, and which happens to be 1926, we find that the second six months' income would become $396,811.51, or a total for the year of $144,291.39.

The purpose of this exhibit is not primarily for the purpose of showing that the second half of this year will follow the trend as shown herein, but it is more reasonable to estimate. I think that the second half of this year will follow the average of seven years, rather than be based on the three months of May, June and July, as has been attempted in Company's Exhibit No. 7.

Q. Mr. Nodder, the year 1924 shows a reduction that was caused in part by the increase in fare. How does that effect the percentage there? A. I believe the increase in fare, came in the second half of the year, didn't it?

Q. Second half of 1924, June 1st. A. So that percentage would have a tendency, I presume to lower the average because the second year without a fare increase would have been lower.

Q. Been 39.60 approximately? Wouldn't it? A. Approximately, yes; made a very slight difference in the average.

Now the fact is that every year on this exhibit, the first half has been less than the second half, and from that fact I draw the conclusion that this year's income would at least be greater than the first half; that is, the income for the second half would be much greater than the income for the first half of the year, so that if we have 340 some thousand dollars for the first six months' income, the income for the year should not be less than twice that or approximately $800,000.

Q. Doesn't that check the estimate in People's Counsel Ex. No. 1? A. That draws very closely to that figure. I want to also mention and in discussing this first and second six months' income, and an interesting thing to bring to the Commission's attention is that the Com-

pany's accountants, in computing their income tax for the year, have used an income for the second half of the year of $372,500. This would show approximately $820,000 for the year or approximately their dividend requirements, and I might say that this computation was made at least sometime in July, because the method of the computation takes into consideration actual income for the first six months, which was not shown, of course, until after June. That will be shown in my next exhibit.

Q. The next exhibit you want to take up is taxes paid for the years 1923 to 1926 and estimated taxes for the year 1927? A. That is correct.

(Mr. Tingley) I would ask that be introduced in evidence and marked People's Counsel Ex. No. 14.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Ex. No. 14.

Q. Will you explain and comment on that exhibit, Mr. Nodder? A. This is a statement showing the taxes paid for the years 1923 to 1926 and an estimate of the taxes for the year 1927.

This statement shows in detail separately the park taxes, licenses and gasoline taxes, state and county taxes, this latter item, including the State of Maryland, capital stock tax, and then there is the Baltimore Sparrows Point and Chesapeake Railroad taxes which are, we think, holding taxes for the most point in outstanding bonds, the next item subway rental, which is payable to the city for the rental of its underground conduits, which has been classed by the Company as taxes, then comes Federal income taxes and the last two, Federal capital stock tax, and miscellaneous war taxes, both of which are now repealed to a large extent, and the capital stock tax, actually repealed, and the miscellaneous war taxes, as far as the material use by the United is concerned, have no further effect.

I have estimated for the year 1927 a total tax of $1,620,047.87.

Q. Does that closely check Mr. Wolf's estimate in Ex. No. 1? A. That is very close to Mr. Wolf's figures.

As a matter of fact, Mr. Wolf has used a considerable number of these figures in arriving at his estimate. We worked together on that.

The estimate for 1927 has been based in part, taking the park tax first for instance, a study has been made of the percentage which the park tax bears to total passenger revenue, in three preceding years. In 1924 the Park Tax was 6.91 per cent of passenger revenues; in 1925, this tax was 6.84 per cent of passenger revenue, in 1926 it was 6.77 per cent. In other words, there has been a retrogression in those three years of .7 each year. Now basing this same rate of retrogression of .07 per cent the basis for 1907 would be 6.70 and this percentage has been applied to the estimated passenger revenue shows in Mr. Wolf's Exhibit No. 2, $16,099,848.00 and gives a park tax approximately of $1,078,690.00. I think that's a figure too that Mr. Wolf used in that same exhibit, Mr. Tingley.

Now, in computing license and gasoline taxes, I have used the same figure as last year. There may be some small change, but it will not be very relevant.

State, county and city taxes have been shown in sheet No. 2 of the exhibit.

The property taxes are based on the actual bills received for such taxes in Baltimore City, and the Annex and in Baltimore County. They aggregate $340,000. The capital stock tax has been based on last year's figures, that is last year's assessment, and it will be noticed that the 409,224 shares at the 1926 valuation of $37.00 per share produces some $15,141,288.00. Against that in computing the capital stock tax there is applied a credit of the real estate assessment, together with certain tax paying shares which are estimated at the 1926 figure, and give a total credit of $1,007,433 and an assessment per share of $2.462.

I might explain right here that the $75,000 tax increase that Mr. Emmons spoke of is to a large extent taken care of in this capital stock tax assessment. In other words, any increase in the real estate assessment is correspondingly allowed as a credit against the capital stock tax assessment, so that no matter how high the

real estate assessment may be, then higher figure is applied against a capital stock tax assessment and lowers that tax.

(Mr. Howard) Is it your understanding, there is no limit to that and when you reach a physical value——

(The Witness) When you reach a physical value your real estate taxes become property taxes.

(Mr. Markell) That figure has been reached in the past.

(The Witness) Is it higher?

(Mr. Markell) The per share valuation is on a property basis.

(The Witness) As I understand it in 1926, the per share value was $37.00 and a total assessment of $15,000,000 for capital stock purposes.

(Mr. Markell) That was on a property basis.

(The Witness) I am speaking now of the assessment that has been made against the Company, on the capital stock tax.

(Mr. Markell) The thirty-five dollars is because it was made on the property basis, so that keeping it on a property basis, the higher the real estate goes up the higher the $35.00 would have to go up unless you can sell preferred stock under the Act of 1927, which is just what Mr. Emmons said.

(The Witness) You think that $35.00 is too high for the capital stock assessment?

(Mr. Howard) We might, but the State Tax Commission think now it's too low since they have raised our real estate.

(The Witness) I am using here the 1926 figures as actually shown. I am using them as a basis for the 1927 figures.

(Mr. Howard) I only wanted to find out whether you took that consideration into account.

(The Witness) I took into consideration that if just

a nominal amount of preferred stock is issued, it would not allow the State Tax Commission to increase your assessment on the capital stock tax, so that a nominal issue of preferred stock would keep that assessment at $15,000,000 even if you issued one share of stock.

Now, the Subway rental has been based on the previous year's figures. There may be some small change in that, but an appreciably.

Federal income taxes have been based on the Company's own accountant's estimate. I just spoke of that and sheet No. 3 shows a detailed computation.

The net income for the first six months, $347,000, has been taken as a starting point and an estimated net income for the second six months of $472,000, giving a taxable net income of $855,000.00 against which was applied by the accountant, $305,000 for maintenance charges, in track construction, which are charges against the depreciation reserve, but are allowed by the income tax people as a deduction.

That gives a net taxable income of $550,000 which at 13½% is $74,250.00.

(Mr. Tingley) Does that complete your comment on that exhibit, Mr. Nodder?

(The Witness) Yes, sir.

(Examination suspended.)

NOTE: At 3:58 o'clock P. M., The Commission then adjourned until Tuesday, September 13th, 1927, at 10 o'clock A. M.

FIFTH DAY.

Thereupon—

CHARLES NODDER,

a witness of lawful age, produced on behalf of the Public Service Commission of Maryland, having heretofore been duly sworn according to law and whose examination was suspended for the purpose of adjournment, resumed the stand was examined and testified as follows:

DIRECT EXAMINATION (Continued).

By Mr. Tingley:

Q. Mr. Nodder, have you prepared an exhibit entitled "Free Tickets of all Descriptions issued in 1926"? A. Yes sir.

(Mr. Tingley): Will you hand that to the Stenographer and ask that it be marked People's Counsel Exhibit No. 15.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Exhibit No. 15.

Q. Will you describe and comment on that exhibit Mr. Nodder. A. This is an exhibit which shows the free riders of the United, that is, the accounted for riders that don't drop their fares in the box. During 1926 tickets were issued to these free riders in the total of 5,674,893. The exhibit enumerates the various classes of transportation and to whom the tickets and coupon pass books were issued. Particular attention is directed to the last section of this exhibit, those that were issued to park concessionaires and employees. This shows that coupon pass books, as well as individual tickets, were issued to concessionaires and to their employees, by concessionaires I mean concessionaires of the Bay Shore and Gwynn Oak Park, and it will be noted that 294 coupon books, containing 100 tickets, were issued to concessionaires themselves and approximately 95,000 individual tickets to the employees of concessionaires. I know of no warrant in the law which would allow the

Company to issue these tickets, although it is done, as I understand, under a clause in the rental contract with the concessionaires granting them free transportation to and from the parks.

Another large item in this exhibit are tickets issued to plain clothes men in the police department.

Q. You might explain that The policemen and firemen who are in uniform don't use ticekts? A. They ride free on their uniforms. Those, however, who are not in uniform, plain clothes men so spoken of, are issued tickets by the company. No record to my knowledge is actually kept of the number of policemen and firemen who ride free on their uniform, that is, those who are not actually issued tickets.

It seems to me this is quite a source of revenue that the Company could well avail itself of and relieve some other burden of the fare paying public.

To resolve these figures into dollars and cents. If we take the first five items on the exhibit, those are coupon books that are issued to employees outside of strictly business requirements. Those amount to something like 4,300,000 tickets at 7½ cent fare on the two token system would amount to over $324,000.

Now tickets issued to the Police Department for plain-clothes men, some 273,600 tickets, at 7½ cents would be $20,520.

The tickets issued to concessionaires, 125,000 approximately, at 7½ cents would be over $9,200.

I have made some estimate of the Police and Fire Department riders. Assuming approximately 1,200 policemen on the force riding just twice a day, a good many of them go home to lunch incidentally and would ride four times a day, would aggregate something like $92,000 additional revenue that the Company could collect if it should ever care to charge police for riding.

Q. Mr. Nodder, have you prepared an exhibit entitled "Effect on Income Account of Issue of 3 Year Notes of March 1, 1927"? A. I have.

(Mr. Tingley): I ask that that be handed the Stenographer and marked People's Counsel Exhibit No. 16.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Exhibit No. 16.

Q. Will you describe and comment on that exhibit Mr. Nodder? A. This exhibit shows one of the items contributing to a reduced net income for 1927. Fixed Charges to July 31st of this year are more than $38,000 in excess of what they normally would be. This is occasioned by the issuance in March of two and a half million par value 3 year 6% Notes to redeem a like amount of 5 year Notes which did not mature until August 1st. The issuance of this new series of notes on March 4th, or approximately five months ahead of the maturity date of the old five year notes, caused a duplication of interest payments during the period March 4th to July 31st as shown on the first line of the exhibit $31,649.09. This is due to the fact that only part of the five year notes were redeemed on March 4th, there being unredeemed at July 31st $1,270,000 par value of the five year notes.

$1,148,000 par value of these notes were actually redeemed on March 4th and at various times during the period between March 4th to July 31st smaller amounts were retired. Practically all of these latter amounts were retired at a premium ranging from ⅜ to ⅛ of 1% in addition to the commissions charged as a usual thing by the brokers for handling the transaction.

This exhibit shows by months the effect on the carrier's income of this particular financing. The exhibit deals first with the interest separately for both the five year notes and the three year notes. Then the item of Discount is shown showing that discount on the five year notes was $6,702, speaking of totals now, and on the three year notes $12,137.65. This is in addition to some $4,442 which was charged to Surplus upon retirement of the old notes. The actual discount on these old notes during that period was $11,079.82. However, this exhibit merely deals with the duplication in the income account.

It will be noted that the total charged to deductions from Gross Income, to Fixed Charges that is, amounts to $11,738.92. I have deducted from this interest and discount pertaining purely to the three year six per cent. notes of $73,387.65, leaves a duplication of interest and discount in deductions from Gross Income of $38,351.27. There was allowed however by the banking house on funds that were left in their hands pending the final redemption of the old five year notes, interest was allowed $19,644.68, so that there is an actual net duplication in income account of $18,706.59.

Now in spite of the fact that those old five year notes were being retired at a premium, the new three year notes were issued at a discount of three fourths of 1%, and commissions were paid to the Syndicate Managers of 2½%. The total discount, commissions and expenses on the issue of this new series of notes amounted to $87,390.85, the proceeds being the equivalent to 96.50 per cent.

One other thing that may be pointed out in connection with this exhibit is the fact that the notes that were issued in 1922 were sold at a discount of 2% and commissions paid of 3%, netting after other expenses about 94¾. The notes sold in 1927 were disposed of at a discount of three fourths of 1% and commissions paid of 2½%, netting after all expenses over 96½.

Q. Would that indicate impaired borrowing power? A. That would indicate to me a better credit position than the company held in 1922 in that its money cost approximately 2% less.

Q. Mr. Nodder, have you prepared an exhibit entitled "Accident and Damage Accounts" United Railways and Electric Company? A. Yes, sir.

(Mr. Tingley) I ask that that be introduced as evidence and marked People's Counsel Exhibit No. 17.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Exhibit No. 17.

Q. Will you explain and comment on that exhibit, Mr. Nodder? A. This exhibit has been prepared by me as a comment on the Company's Exhibit No. 7. There is

shown on that exhibit an estimate of $120,000 additional charge to be made in the second six months of 1927 for accident reserve. This account, as I understand it, is based on the fact that the reserve during the first few months of the year has been depleted some $10,000 per month, and on the assumption that the same thing will happen during the remaining months of the year the same proportion of $10,000 has been charged in estimating an additional charge of $120,000.

This exhibit shows over a period of six years, that is, since the reserve as such was actually begun, the amount set up in the reserve and the amount charged to expenses to take care of the cost of the accidents themselves. It will be noted that from 1921 to 1924 the charges to income, that is the second column, were in excess of the actual cost of accidents which is shown in the first column.

For instance, 1921, the cost of the accidents, which incidentally includes the cost of the claim department, was $570,700.10, while charges were made to income to provide for these claims of $645,890.06 in that year, and in the next year the provision was made on the basis of 4% of revenue.

This percentage was cut in 1923 to 3½% and in subsequent years and up to the present time it's 3¼% of revenue.

It will be noted also that the last two years, that is 1925 and '26, the charges to income on the 3¼% of revenue has not been sufficient to cover the cost of claims. However I do want to make one comment on 1926 figure which is shown as estimated. This is made up of the actual accidents paid for 1926 to July 31st, and an estimate was then made by the Company's Claim Department at July 31st of the claims which they would be expected to pay for 1926. The total of those two aggregate $628,979.41. One thing I would comment on that the estimate for 1926 is over $30,000 in excess of 1925, so that while the aggregate is on an estimated basis the estimate is perhaps subject to some correction.

It seems to me that this exhibit shows that instead

of loading the last six months of this year with an amount of $120,000, which would raise the reserve to the 1923 mark when the reserve accrual was decreased from 3½ to 3¼ per cent. of revenues, it would be logical to withhold such action bearing in mind that at December 31, 1926, the reserve was $302,000, while claims paid during the seven months of this year and estimated as I have already mentioned as still being due for this year total $292,848.25. The reserve at December 31, 1926, was still in excess of the claim requirements even though estimated, and as I say 1926 is pretty well estimated.

As far as 1927 accidents are concerned to July 31, 1927, $228,063.25 has been paid out in claims and in claim department expenses, while $340,639.00 has been charged to expenses. It is at present a little premature to anticipate what accidents will occur during the balance of this year, but it does not seem proper to me to increase the reserve merely to provide a larger reserve out of operating expenses. The thing to do would be to reduce accidents rather than increase the reserve therefore.

I want to make one comment on Company's Exhibit No. 6. In 1926 it is shown that profits and loss debits distributed to appropriate years is $11,776.95. This, as was brought out in cross-examination, includes $100,000 for property abandoned chargeable to operating expenses. This amount however of $100,000 is, according to the Commission's classification, a proper charge to profit and loss and if not an operation expense. Now if that item of $100,000 is taken out the return received for 1926 would show $4,389,203.37 which would result in a return of instead of 5.912 of 6.05.

Q. Mr. Nodder, have you an exhibit on the cost of painting the war paint street cars? A. Yes sir.

(Mr. Tingley): I ask that be offered in evidence and marked People's Counsel Exhibit No. 18.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Exhibit No. 18.

Q. Will you explain and comment on that exhibit, Mr. Nodder? A. This exhibit shows the approximate cost

of painting various types of various colored cars exterior only. This exhibit has been prepared from data secured from the United Railways Superintendent of Rolling Stock and Shops relative to the cost of painting various types of cars at the present time or during the last few months.

The approximate cost of painting the exterior of the standard semi-convertible car in a standard color of red is shown in the first item to be $65.00. The approximate cost of painting the various shades which have been running through our streets in the last few months are shown following that amount. For instance, Car No. 4635 was painted American Vermillion and Cream at a cost of $98.00. The next one was painted autumn brown and continental buff with red band at a cost of $96.00. I won't read the balance of them. It sounds like a dress creation from Paris, so I won't go through those. It will be noted however that the cheapest of these paint jobs in fancy colors was $85.00, Car No. 5694.

Q. Which was the car picked out for the beauty contest? A. I understand car No. 5158, Malori Green.

(Mr. Emmons) Without the band.

Q. And the cost of painting that car was what? A. $100.00.

Q. How many cars pass through the paint shops a year? A. Approximately 1200 cars pass through the paint shops each year.

Q. What would be the increased cost of painting the cars on the basis of the prize winning car for a year? A. The prize winning car is approximately $35.00 more than the standard color. 1,200 cars at $35.00 would show an excess cost of painting of $42,000.

(Mr. Tingley): Mr. Nodder is with you for cross examination.

(Mr. Clark): Before cross examination could I ask one question, please? That exhibit No. 17, how was that cost of accidents and claims made up Mr. Nodder?

(The Witness): That cost of accidents and claims

covers the cost of the Claim Department plus actual claims paid out.

(Mr. Clark): That includes all the costs of operating the department then?

(The Witness): That's correct.

(Mr. Clark): Do you know the increases with respect to operating the department of 1921 to 1926 from year to year?

(The Witness): I can give you those figures Mr. Clark. The cost of operating the department in 1921 was $108,732.00. I am speaking in round figures now. In 1922, $97,768; 1923, $103,527; 1924, $106,780; 1925, $109,659.00; 1926, $107,108.66.

CROSS EXAMINATION

By Mr. Howard:

Q. Mr. Nodder your exhibit No. 12 is made up from the returns on file with the Commission, isn't it? A. Yes.

Q. So we will pass from that. In Exhibit No. 14, which was your statement of taxes, you assumed no increase in taxes, did you? A. Or 1927? No, I assumed a reduction as a matter of fact.

Q. But I mean so far as the local taxes in the State and City are concerned, you assumed no increase. A. No sir, for the reasons as I stated the other day that the capital stock tax is allowed a credit for any increase in assessment of the real estate tax.

Q. Now Ex. No. 15 is the first one you filed today? A. Yes sir.

Q. That's the free ticket exhibit. That is based on the number of pass books and free tickets issued during the year, isn't it? A. Yes sir.

Q. All those pass books are marked for the year that they are issued and can't be used in a subsequent year? A. That's my understanding.

Q. Isn't it also a fact that considerably less are used

than are issued? A. There were issued, last year, as shown by this exhibit, five million 674. There were actually shown by the Company's statement to the Commission some four million eight hundred and seventy-six.

Q. So there is a substantial difference between the amount issued and the amount used? A. There is quite a difference, yes.

Q. And that is true of each previous year, isn't it? A. Yes sir.

Q. You adopted, however, as the basis of your exhibit, the amount of pass books issued and not the tickets used? A. (Mr. Tingley): Will you explain why that was?

(The Witness): Yes. In talking this over with your Mr. Dietz, he explained that it was impractical to give me the actual amount that was collected of these various types of tickets, so the only thing I could do was to get what were issued, and the difference is less than 10%.

Q. You gave the amounts for 1926 that were actually used and said they were four million eight hundred and seventy-six? A. Those were the total acutally used.

Q. And you likewise had the total figures furnished you for the previous years too? A. They are in the report.

Q. And they are in each case substantially less? A. I can't say for previous years, because this is the only year I got the figure for those that were actually issued.

Q. You could have gotten those? A. If I had asked for them, yes. I could have gotten them.

Q. Isn't this also true in connection with those free passes that there is no transfer privilege on them? A. That's correct.

Q. So a man who was paying his way and changing at a transfer station would call for one fare? A. That is correct.

Q. But the man who is using one of these pass books would use two tickets in that case, wouldn't he? A. Yes.

Q. So that also has some effect on the total results shown by your exhibit, has it not? A. Yes sir.

Q. Isn't that about 40%? A. I believe that's 40% of the free passes.

Q. In other words, as a real basis for comparison, you would have to scale the figures 40% to compare them with the passengers? A. I hardly think so. I think if a man were paying for these rides, or paying for a transfer at all he wouldn't take in a good many cases the transfer that's given to him, for nothing; he would rather walk the two blocks than take a transfer.

Q. Isn't it fair to assume that the same ratio that holds between the use of transfers and the tickets would hold in this case, if all parties had to pay instead of given tickets? A. I assume it would.

Q. Now turn to your exhibit No. 16 for a moment. That is your showing in the case of this note financing, isn't it? A. Yes sir.

Q. That is a period of about five months, when you find that partial overlap, is it not? A. Yes sir.

Q. And the net amount of your overlap, after crediting the bank interest allowed, on the money on deposit is how much? A. $18,706.59.

Q. Now five months interest on the entire issue would have been $62,500, wouldn't it? A. Yes sir.

Q. So the overlap is only a very partial one, isn't it? A. The overlap in interest itself is $31,000.

Q. But that is subject to the credit of the bank interest? A. Yes sir.

Q. If they had paid double interest during the period they would have paid $62,500, wouldn't they? A. Yes. Certain of those notes were retired at the beginning of the period so that the entire interest was not $62,000.

Q. I am only calling attention to the fact that the net result of the piece of financing that you are calling attention to is that figure of $18,000?

Now you spoke of the rate at which those notes were

sold as indicating an improvement in the market, weren't the first notes five year notes? A. Yes sir.

Q. And weren't the second notes three year notes? A. Yes sir.

Q. Isn't it natural for a three year note to sell higher than a five year note, when they are both selling at a discount?

When did you state the five year notes were sold at? A. The five year notes netted 94.

Q. And what did the three notes net? A. 96½.

Q. Now as to one of those you have five years to spread the discount over and as to the other you have only three years. Isn't it only natural and usual that when notes are sold at a discount, that a short time note sells at a less discount than a long time note does? A. I think that's reflected in the fact that the five year notes were sold at 3% and the three year notes were sold at 2½%. Not so much the discount. I don't think a period of time of three and five years, would make very much difference in a note of that kind in itself. The credit position of the Company, I think has a big thing to do with it.

Q. You don't think the difference of a not being a three year note and a five year note has much to do with the discount it's sold for? A. No sir.

Q. Mr. Nodder, in reference to exhibit No. 17, I understood your final recommendation to be that the Company ought to do something to keep down accidents rather than increase the accident reserve, is that right? A. That's correct.

Q. One of those sort of suggestions that's very easy to make? A. Very easy.

Q. Now coming to your Exhibit No. 18, if I understand you, or correct me if I am wrong, is this a list of all the cars that the Company had painted in these fancy colors as you call them? A. Yes sir.

Q. And there are ten of them, aren't they? A. That's what I understand?

Q. And how many did you say they paint a year? A. 1200 pass thru the paint shops.

Q. So your criticism is based on the fact that they have had ten cars experimentally painted in these special colors at these increased costs shown on this exhibit? A. My criticism is what would be the cost if all the cars are painted in these experimental colors. Not so much these ten. The increase in cost of these ten only represent a thousand dollars.

Q. It represents half of that, doesn't it? That last item is a double car, isn't it? You can't compare that last item with the first item? A. No, you can't.

Q. In fact, the last item is two cars, isn't it, or more nearly two than one? A. More nearly two than one.

Q. So you can't compare that with the first item? A. That's true.

Q. And the largest increase in any one car is not over $50.00? A. $50.00, the next to the last car.

Q. And there are only ten cars in the whole outfit of the United that have been changed in its colors, that's right, isn't it? A. Yes.

Q. When you speak of the beauty contest, or the advertisement of the beauty contest, what were you referring to? An expression of public desire? A. I don't believe I referred to a beauty contest, it was referred to. As I understand the thing these cars were painted and expressions were desired or requested from the public as to what they considered the best.

Q. So your answer as to which was the one that was approved was the one approved by the public, wasn't it? A. By the public.

Q. And you are not criticising then, I understand the United by having made this experiment at a cost of five or six hundred dollars? A. No.

Q. But you were criticising them then if they were to decide at the present time to paint the main part of their cars, these other colors? A. Yes, sir. The excess cost of painting cars in the fancy colors.

(Mr. Tingley) In a time of an emergency.

(The Witness) In a time of an emergency, yes, sir.

Q. This table that you got from the United is the cost of painting these single, individual experimental cars, isn't it? A. Yes, sir.

Q. It would be a good deal cheaper to paint a large number the same way, wouldn't it? A. I can't say that.

Q. It's a fair inference? A. It's a fair inference that some reduction in the price would be made on a large quantity.

(Mr. Howard) That's all, Mr. Nodder.

RE-DIRECT EXAMINATION

By Mr. Tingley:

Q. Mr. Nodder, if 40% allowance were made to take care of Mr. Howard's transfer passengers, who are free riders, that would still leave over three million fares lost to the Company, wouldn't it? A. Yes, sir.

Q. Taking Exhibit No. 16, if by reason of the five and three year periods, of the two issues of notes, the notes did actually sell on the same basis, that wouldn't indicate that the credit position of the Company had been impaired, would it? A. No, I don't think so.

Q. Had the fare increase been proposed by the company at the time that the winner of the beauty contest was selected by Mrs. Block. A. No, sir, not that I know of.

(Mr. Clark) I was just about to ask you when that contest did start.

(The Witness) I really can't tell you off hand. Early in the spring as I understand. Early in the year.

(Mr. Clark) About when was it, Mr. Emmons?

(Mr. Emmons) We had them completed by Easter Day.

We had the Easter Day parade. So we started early in the year.

(Mr. Toole) Mr. Nodder, about Ex. No. 16, if I understand you right there was a loss of some $18,000 on those notes?

(The Witness) Yes, sir.

(Mr. Toole) What banking house supplied that money to the United, do you know?

(The Witness) I think Alexander Brown and Sons handled this issue of notes.

(Mr. Toole) Has Alexander Brown & Sons got anything to do with the Company in any way you know of?

(The Witness) I believe they own quite a lot of stock in the Company.

(Mr. Toole) Own some of the bonds and own some of the stock?

(The Witness) I can't say about the bonds, but they do own some of the stock.

(Examination concluded.)

(Mr. Tingley) That closes our case.

REBUTTAL

Thereupon—

C. D. EMMONS,

a witness of lawful age, produced on behalf of the applicant, having heretofore been duly sworn according to law, resumed the stand in rebuttal, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Howard:

Q. Mr. Emmons, let me first ask you whether you have any additional figures to give the Commission on the operation of the road, during the few days that have passed since you were last able to give such figures?

A. We have gotten together hurriedly the figures of yesterday, hoping ourselves with thhe Water Ways Convention and the Bombardment of Fort McHenry, we would actually show an increase in earnings. The fact is that with all the holiday that was going on, we showed an increase of $106.00 yesterday, expecting an increase between $5,000 and $8,000.

On Sunday with the Fleet at Fort McHenry and with it advertised in the cars, about the bombardment we went back $2,245, or 7.4%.

On Saturday also, with the Waterways Convention on hand, we went back 7% with $3,658 decrease, the days being rather comparable as to temperatures and weather. The day before that, on Friday, we went back $1,202, or 2.27%.

(Mr. Tingley) How about the day before that?

(The Witness) The day before that was a very, very bad day this year. And we made an increase against a stormy day last year.

Q. What day is this? A. This is on Thursday. We made an increase of $1,660, or 4.1%. The day ahead of that September 7th, Wednesday, with two days of almost comparable weather, which were given before, we made a decrease of 5.3% of $2,470. The day before that also with comparable weather we made a decrease of 6% of $2,898.

(Mr. Tingley) How about the two days before that?

(The Witness) I have already given that.

Both had slight increases due to weather comparison, $860 increase on Monday, September 5th, $2,397.00 increase on Sunday, September 4th, with the day before that a decrease of $2,698, or 5.4%; the day before that a decrease of 4.1%, and the day before that a decrease of $1,179, or 2.7%.

(Mr. Tingley) What is the average decline for September so far in per cent?

(The Witness) The average decline for September so far in per cent, I couldn't take this Monday because that

compares against Sunday, the nearest would be Sunday, that also compares against Saturday, we do not get a real definite decline percentage until we get into the middle of the week. I think I have it figured here some place.

(Mr. Tingley) Taking it day for day as you have given it in the case of the other months.

(The Witness) I just read them all.

(Mr. Tingley) I mean the average per cent.

(Commissioner Harper) Do you want the average or the weighted average?

(The Witness) I haven't day by day average.

(Mr. Tingley) It isn't 4%, is it?

(The Witness) It's not four, I don't believe.

(Mr. Tingley) It isn't three?

(The Witness) I haven't gotten the day by day average. The last we have here is Sunday 5.9, so as I say with Monday compared with Sunday, which is a $40,000 day, would show an offset of $18,000.

(Mr. Tingley) Isn't the average on 2.87?

(The Witness) I haven't that figure. I should think it would be more. What I am trying to say and I really think it's true, that when we get days of comparable weather, we are running five, six and seven per cent back of last year.

I might say that talking about weather, that the weather for August was in question, and we have gotten the meteorological reports for Baltimore of August of last year and August of this year and we find this; the highest temperature in 1927 was 91 and last year 98. The lowest temperature was 55 as against 59, the clear days were eight as against 13; partly cloudy 12 as against 6; the cloudy 11 against 12; 1.01 inch precipitation, 15 as against 13, one-quarter inch precipitation

5 against 7, total sunshine hours 232 against 230, so I don't think the weather can be blamed for much of anything.

(Mr. Tingley) You don't mean by that to contradict the data shown in your former exhibit, do you?

(The Witness) No, I mean the losses are due to a condition of stabilizing of the affect of the automobile rather than the weather or business or anything of that kind.

(Mr. Tingley) But the data that's shown on the Company's exhibit as to what days were clear and what cloudy and the temperatures, you understand to be correct?

(The Witness) Those are correct and this is a summary of all of them.

By Mr. Howard:

Q. Now, Mr. Emmons, I want to ask you a question in connection with these exhibits that have been filed by People's Counsel. In the first place, their Exhibit No. 1 was their estimate or Mr. Wolf's estimate of your income for the year 1927. Now, if I understand it right, that does not allow for three items that you have allowed for, namely, $120,000 increase in power costs for this year, $120,000 increase in accident reserve, and $75,000 for additional taxes, is that right? A. That's correct.

Q. Now, first of all in reference to the $120,000 additional power costs. Mr. Wolf said you had a clause in your contract that entitles you to as good a price as any other customer, in the same class? A. Under similar operating conditions, yes.

Q. And he called attention to the fact that the Baltimore Copper Company is getting a cheaper rate than you are, is that right? A. I think it figures so, but they cannot be compared to us at all.

Q. That's what I wanted to ask you. Are they in the same class with you or not? A. Not at all and no person will say so.

Q. Explain that? A. Because they have a continuous load of a certain number of kilowatts and their peak capacity is always the same. Our peak capacity varies in the morning and in the afternoon. We have a varied load, so that what we take during the middle of the day is multiplied by about two and a half to three times for morning and evening, and the Copper Works is a continuous load all the time, and can just take up a certain amount of continuous power.

(Commissioner Harper) You spoke of the Copper Works' peak demand.

(The Witness) It's always the same.

Q. They have no peak? A. Their one load is their peak.

Q. They are a peak or whole. Now they use their current, don't they, for the purification of copper by electrolysis? A. Yes.

Q. And that is a perfectly constant operation, isn't it? A. Yes.

Q. Where as your demand varies all thru the day and night, doesn't it? A. Yes, it does.

Q. And then some reference was made to the fact that there was a clause in their contract, by which in any emergency, or a time when there was a shortage of current, they might be cut off first, is that true? A. That is true, yes.

Q. That would save the supply company from having a reserve supply of additional power to have a customer with a clause like that? A. You mean the Power Company?

Q. Yes. A. Yes, they take rather a waste power, just a continuous power themselves.

Q. Why can't you put a similar clause in your contract that you could be cut off at any time when there was a shortage? A. We were very careful to see that the car service in Baltimore should not be interferred with

under any circumstances, if it could be avoided in any way.

Q. Therefore, the injury caused by cutting off current in the electrolytic process is not comparable in any way to the injury that would be caused to the United Railways by cutting off its current? A. Not at all.

Q. This $120,000 then is based on the charge actually made? A. Based on the charge actually made.

Q. And which you have investigated? A. Which we have investigated.

Q. And which you see no way of getting out of? A. I fear not, as I remarked to Mr. Wolf the other day. We tried to get out of a similar charge before, when we went thru an arbitration and finally had to pay $130,000.

Q. Some questions were asked by the Chairman of the Commission, that he understood the increased amount to be paid for current, at certain points, would be only $30,000. Let me ask you is this a total increase in the current charged to you or what is it? A. This is not an increase over the current charge of last year. This is an increase over the current as charged at the kilowatt hour rate of 9.36 which rate was carried over from last year, and which was not disturbed until receiving a letter dated the 8th of August in which we were advised that after they had closed their books and put all the charges in, that the new rate would be 10.31, consequently, in all fairness, rather than saying this $120,000 should be charged to the last six months, there should be $10,000 a month of it pro-rated back, so that all in all what we actually show for the first six months should be decreased by $60,000 or its proportion of this $120,000 the increased rate applying not only to the current to be used, but applying back to the current used since the first of the year.

Q. I want to make clear is that you have used less current this year than last? A. That is true so that our total bill will be less than last year.

Q. But it is charged to you at a higher rate? A. It is charged to us at a higher rate.

Q. Do you know anything about the $30,000 that the Chairman referred to? A. I think that was the expectancy that our load would keep up and the additional rate would give us only this $30,000 increase over last year, but as I say even with this $120,000 our total bill will be less than last year likely. That's due to the decreased load, due to the need of cutting service.

(The Chairman) Where is the power metered?

(The Witness) The power is metered at the Westport Station, or Pratt Street Station. It's metered on the high tension side.

Q. Your cables run there, don't they? A. Yes, we have a central distributing point at the Pratt Street Station.

Q. You get your current right at the Power House? A. Yes.

(The Chairman) Do I understand that you actually pay fewer dollars for the current than you used in 1927 than you did for the current you used in 1926?

(The Witness) We will, I think. Of course, the 1927 story isn't told you, but on the same basis, our kilowatt hour requirements are going to be very much less than used last year, altho the rate will be higher, the total bill will be somewhat lower, I think, even with this $120,000.

(Commissioner Harper) You are operating a great many less car miles.

(The Witness) That's the reason.

(Commissioner Harper) How does your rate compare with other companies in this section of the country?

(The Witness) Very favorably. It's difficult to compare because a good many companies have power houses in whole or in part of their own, and where they have their own power houses, their fixed charge for that power house is in the fixed charges in the bill, so that it's very difficult to compare the power costs of our Company with those of any other company unless they are all purchased power and there are not many companies that purchase all their power as we do.

(The Chairman) Philadelphia Rapid Transit purchases all of its power, does it not?

(The Witness) I am not sure whether they purchase all of their power. I thought they still had some small floating stations of their own.

(The Chairman) A few moments ago, Mr. Emmons, you spoke of the clause in the contract of the Copper Company, which allowed the Gas Company to shut off their power in case of emergency before others. Do you know of a case where that has ever been done, where the power was shut off to the Copper Company because of an insufficient supply or for any reason other than an accident.

(The Witness) I do not know. It's just one of those things we felt we had to be protected. We have had since this contract was made in 1920 very continuous performances, and I think the only outrages have been due almost entirely to freaks of nature, lightning and things of that kind, and then for a very short time.

(The Chairman) But they have occurred?

(The Witness) They have occurred.

(The Chairman) And the Railway has been tied up on account of those?

(The Witness) A few minutes at a time, yes.

Q. (By Mr. Howard) Now another item that is not included in the People's Counsel Exhibit is the increase in your accident reserve. You have heard the testimony that has been given in reference to that item. Have you anything further to say to the Commission about it? A. I think that exhibit of People's Counsel itself shows that we are in need of the increase. For instance, that exhibit shows that in 1924 we had a reserve for damages of $359,000 in rough figures. In 1925 we slipped back $33,000 in that reserve, totaling $326,000.00; 1926, we slipped back $24,000 additional with a reserve of $302,000.00, and at the end of July 31st, 1927, we had slipped back $70,000.00 additional, or a total of $128,000.00 in two years and a half, about.

In my direct testimony I stated the fact that Haskins and Sells criticized us for not having enough, claiming that altho we had on the first of January a sufficient amount, as Mr. Nodder testified, to take care of the ones to be paid and the ones that were filed,——

Q. What first of January is this that you are speaking of? A. First of January this year. We showed out of $302,000.00 we had claims at that time of $290,000, but as against that there is no possibility to figure the claims that are still back of that, because they keep coming in for several years after they happen and also there is nothing in that providing for any extraordinary accident or any great casualty, so that we were criticized by the Auditors for not having enough.

What we are trying to do by putting this $120,000 in is to simply bring ourselves back to where we started the year, and again that should be retroactive, and if that goes back by months, $10,000 a month, it would make our first six months that much less than actually shown and would put us in a position of meeting the claims that's so often made that the least six months is higher than the first. That is, if you take $120,000 from our present actual first six months, and not have to take the entire thing off of the last six months, then our estimate for the last six months is actually larger than our actual for the first six months.

Q. Now the third item that I spoke of is additional taxes. I believe you have already explained that item, but you have heard some comment on it. Will you explain to the Commission what you have to say in reference to that? A. Mr. Nodder is right. If we issue some preferred stocks, the law passed would protect us on not having an increase in tax.

Q. Is he right in this sense? Suppose you, Mr. Emmons, bought five shares of preferred stock? A. It would certainly have to be in good faith. It would have to be an issue of some substantial amount I am sure. I am also sure the Company would not attempt anything of that kind. The State Tax Commission puts a Tax value on our rolling stock and shop machinery, and have it up to full value. That has to stand plus the taxes of the Ap-

peals Tax Court of the City which gives the total gross value of the capital stock unless this loss can be taken effect of. If we have no credit, I don't see how we can take credit for it, and it will cost us $75,000 which we have shown here will be the net if we don't get the credit position that will let us take advantage of it.

Q. So unless you can sell an issue of preferred stock, before the close of the year, you figure that you certainly have an increased tax of $75,000? A. No question of that.

Q. Now these three items that we have just been speaking about of increased cost of power, increased cost of accidents, or accident reserve, or increased taxes for the year 1927, I want to ask you this, you filed a plat, ex. No. 5 showing the course of your net earnings for the 7 months or the 8 months that have elapsed, you recall it, don't you? A. Yes, I do.

Q. Was that based upon these adjustments that have to be made for the year, or did that not include it? A. It did not include it.

Q. If it had ben included the net result would be to put that dotted red line that indicates your net earnings for each month about $20,000 lower each month, wouldn't it? A. About $26,000 lower each month.

(Mr. Tingley) The income tax would have been reduced, wouldn't it, Mr. Emmons?

(The Witness) Somewhat.

(Mr. Tingley) That would effect it?

(The Witness) A little bit.

Q. Your income tax tho is not one of your most important features, because you have so large a bonded debt, isn't that true? A. That's true.

Q. And because you don't earn so much too. Now, Mr. Emmons, I don't want to go over each of these exhibits, but have you People's Counsel Ex. No. 2 there? A. I have, yes sir.

Q. That is an attempt to estimate your income for 1928 on a ten-cent cash fare basis.

Q. They have made an allowance there for increase in power, have they not? A. $100,000.

Q. And increased accident reserve? A. $50,000.

Q. In both cases those are less than the amounts actually required? A. Yes, sir, but if no increase in taxes on this exhibit.

Q. Now People's Counsel Ex. No. 3, have you any special comment on that? A. With this exception, that the attempt to show that conditions are getting better thru a decrease in percent increase I think is not well founded because the basis is always increasing and it's quite natural that the percentage would show less.

Q. If automobiles increased in a geometrical proportion without change they would illustrate the old story about taking a chess board, and putting one grain of corn on the first and two on the second? A. Yes.

Q. You would soon reach a number that the entire earth wouldn't be big enough to park them on, would it if you kept on with the geometrical ratio? A. Exactly.

Q. So it's the mathematical increase that is significant? A. Yes, and this simply carries out our conviction that it is the automobile that's taking the passengers from the street cars to such an extent that it is the real difficulty.

Q. You think Ex. No. 3 corroborates your exhibit on the whole, which is your Exhibit No. 11? A. Yes, sir.

(Mr. Tingley) They are the same exhibits, but we draw different conclusions from them.

Q. One is a chart and the other is a table. Now Ex. No. 4 was merely a tabulation of your securities? A. Yes, excepting the percentages are based on 70,000,000, instead of being brought up to date of about 73 million.

Q. So in the first place they don't include any allowance for easements? A. No.

Q. And in the second place the value is that of 1924, whereas the time when the securities are out is the first of 1927 or 1926? A. Yes.

Q. Your bonded debt is large compared to your stock, isn't it? A. Yes, it is, yes, sir.

Q. That's one of your troubles, isn't it? A. It is, yes sir.

Q. Exhibit No. 5 of People's Counsel is a comparison of Street railway operations in different cities for the year 1926. A. Yes, that's the funded debt and income bonds.

Q. General statistics? A. Yes, sir.

Q. Just while we are on that subject, you were asked, I think, when you were on the stand last, if you could give some figures as to Pittsburgh and Philadelphia in line with the figures that you were giving in reference to other cities? A. Yes, I have been able to get them by direct appeal to those three places.

Q. Will you tell the Commission just what those figures are? A. Pittsburgh, having had a five-cent fare before January, —

Q. This is all in connection with changing the fare on the travelling? A. Yes. Having had a five-cent fare until January, 1918, they then increased their fare to six cents, two for 11 cents, with the result that showed a decrease in revenue passengers of 11.9% and a decrease in passenger revenue of 4.2%. To my mind it's very evident that was on a falling trend of business.

Q. What time was that? A. In January, 1918.

(Mr. Tingley) In 1918, would you say that's true?

(The Witness) At that time in Pittsburgh it must have been so.

(Mr. Tingley) It wasn't anywhere else, was it?

(The Witness) It may not have been in other places, but it would appear to me that that was probably so.

Q. That was an increase of six cents? A. Yes. On June 20th of the same year they tried an experiment of 5c central zone with seven cents beyond the central city

zone, with an increase in revenue passengers of 1.3 and an increase in passenger revenue of 18.3%.

Then on August 1, 1919, they raised the fare to ten cents, four for thirty, with an increase in revenue passengers of 7.6 and increase in passenger revenue of 43.5. On September 1, 1920, they raised the fare to ten cents, 3 for 25, having an increase in revenue passengers of 6.2 with an increase in passenger revenue of 15.7.

Q. These are the increases that followed? A. These changes in rates of fare.

Q. And over what period? A. These are the daily averages until the next change. The final change was on June 1, 1924, when they retained the 10-cent fare, three for a quarter, and put in the dollar and a half weekly pass. I would like to have this noticed that it was four years after they had their ten cent, three for a quarter, that they began their pass. The result of that was 1% increase in revenue passengers, with 2% increase in passenger revenue.

Philadelphia had a five-cent fare with a three-cent exchange until —

Q. That's equivalent to a transfer, isn't it? A. Yes, they call it an exchange over there. Until November 1, 1920, when they changed to the seven-cent fare, four for 25c, and three cents for a transfer, with the result that they showed a decrease in revenue passengers of 5.5%, but an increase in passenger revenue of 17.1%.

On September 25th, 1924, they changed to an eight-cent cash fare, two for fifteen cents, and three cents for transfer, showing since that time a decrease of revenue passengers of .7%, but an increase in passenger revenue of 14.2%.

In Washington, the Capital Traction Company figures, I am reading from, had a five-cent fare, six for 25c, until October 26th, 1918, when it increased their fare to a flat five cents, showing an increase of revenue passengers of 17.6 and an increase in passenger revenue of 35%.

On June 1, 1919, with the five-cent fare still in exist-

ence, they began charging two cents for a transfer, showing a 9.2% loss in revenue passenger and a 7% loss in receipts. I think that Washington was hit by the after-war effect very quickly by the dismissal of clerks, making this period a decreased period.

November 1, 1919, they raised their fare to seven cents, four for 25c, showing a decrease in revenue passengers of 5.6, but an increase in passenger revenue of 19.1.

On June 1, 1920, the fare was again raised to eight cents cash, four for 30 cents, showing a decrease in revenue passengers of 8.8 and an increase in passenger revenue of 8.7.

On September 1, 1921, the fare was again raised with an eight-cent cash, five tickets for 25 cents. That was a decrease, however, this is a flat seven cents. A decrease in the fare and they had a decrease in revenue passengers of 1.4 and they showed a decrease in passenger revenue of 6.4.

Then on March 1, 1922, they made a further decrease in the fare, from eight cents cash to six for 40 cents, that's less than seven cents, showing since that time a decrease in revenue passengers of 8.7 and a decrease in receipts of 10.7, and as we were advised the other day the Capital Traction Company were about to ask for a change in their fare rate.

(Commissioner Harper) Your statement tends to show then where there is a change in the fare the revenue passengers will decrease but the passenger revenue will increase?

(The Witness) Not always. This first one, the Capital Traction change from 6 and a quarter to 5 cents, and the revenue passengers increased 17.6, and the receipts increased 35%. I think it's due entirely to the trend of business, because all thru these we have read you will notice that many times with an increased rate of fare the passengers have increased.

For instance, in Pittsburgh, when they changed from a five-cent central zone to 7 cents beyond, to a straight

ten-cent fare, four for thirty cents, that's 7½ cents the revenue passengers, increased 7.6% while their passenger revenue increased 23½%. Then the next change from four for thirty cents to three for 35 cents, the revenue passengers increased 6.2% and passenger revenue increasing 15.7%.

So it isn't that the revenue passengers have decreased on an increased fare.

By Mr. Howard:

Q. You think, in other words, that the change in fare is a minor factor in bringing about increases and decreases in riding, as shown by these figures? A. I do. I think it's entirely on the trend of business at that time.

(Mr. Tingley) That's true regardless of the amount of fare?

(The Witness) Yes, because in Boston we increased from eight to ten cents. At that time you will remember that was on a falling trend of business they only had a 6% decrease in revenue passengers, but I think it was 16% increase in growth, but it was the very next year with the ten cents continuing they increased 6.3% in passengers with a same increase of 6.3% increase in gross.

(Mr. Tingley) These other cities that you discussed this morning, none of them involve an increase to a straight ten-cent fare, without reduction, do they?

(The Witness) No.

(Mr. Tingley) And there isn't any inference because an increase from 8 to 8 1-3 cents causes a falling off in passenger revenue that an increase to ten wouldn't?

(The Witness) I think the general inference from the entire situation is in some places we have seen an increase of two cents with the same results.

(Mr. Tingley) But the fact that 8 to 8 1-3 cents isn't worth more than the car ride is worth, doesn't mean that ten cents isn't?

(The Witness) It doesn't mean so, but I think the car ride is worth ten cents.

(Mr. Tingley) In other words, there is no particular significance in any data, except in places where the ten-cent fare is in effect?

(The Witness) We have Boston which has a ten-cent fare.

(Commissioner Harper) In your case you estimate any increase in the fare will mean a decrease in the number of passengers.

(The Witness) We did 2% just to try to make a conservative statement and feeling that temporarily it will make some change.

(Commissioner Harper) But it does produce a substantial increase in revenue?

(The Witness) It does, always produce a substantial increase in revenue.

(Commissioner Harper) And that means that the average every-day daily rider will bear the burden of the increase?

(The Witness) Yes, the Company has to have it, however.

(By Mr. Howard) Then you see nothing in any of these figures that you submitted today or the figures that were submitted at the previous sessions of the Commission to indicate that any of these raises that have been made, or that that raise to a flat fare of ten cents, would approach or equal the economic limit? A. I do not think so.

Q. Or the value of the service to the public? A. I do not think so.

Q. People's Counsel Ex. No. 6, is merely a summary of securities that you have issued in the last 15 years, I believe? A. Yes.

Q. The last item there, these three-year notes that

have been the subject of discussion, I will come to a little more in detail when we come to the special exhibit relating to them. When was that sale of notes closed? A. March.

Q. And not in July, of course? Ex. No. 7 I believe I have nothing to ask you of that. Exhibit No. 8 is a chart prepared by People's Counsel showing the wages of platform men. Have you any comments to make on that? A. I have this comment to make on that; that in the first place retail food costs is used rather than the United States Labor Bureau Cost of Living which curve is considerably higher than the retail goods cost curve.

Q. Food has gone down more than other things? A. More than the general cost of living and the second thing is that I have super-imposed on this diagram, our own cost of living, showing that the per mile cost of operation doesn't compare in any way with these other curves.

Q. Then on the one that you have in your hand, you have added in red ink a curve showing what you call the Company's cost of living, is that right? Yes.

Q. Meaning by that it's operating costs? A. That's right, yes.

(Mr. Tingley): The wages are the big item in that cost, aren't they?

(The Witness): The wages are the big item.

(Mr. Tingley): Then you would expect that result.

(The Witness): That's our own cost, nevertheless.

(Mr. Tingley): Your cost of living or dying?

(Mr. Markell): Cost of existing.

Q. That indicates what you call the Company's cost of living has stuck pretty close to the wages of the platform men? A. It does, yes.

(Mr. Tingley): You don't attach any importance to that?

(The Witness) A great deal, a great deal more importance than the price of food.

(Mr. Tingley) When the wages are in that figure?

(The Witness) Certainly, because the wages is what we have to pay out and what we have to collect for.

Q. Do you in that refer only to the weighted average that they bear to your whole cost? A. That is true.

Q. And the wages of your platform men, are not a very large factor of your total cost? A. But they are.

(Mr. Tingley) They are pretty nearly all of it?

(The Witness) About 40 to 42%.

(Mr. Howard) Will you file that with the stenographer?

NOTE: Chart above referred to is here filed in evidence and marked Applicant's Ex. No. 20.

(The Chairman) As I understand it, you have simply taken People's Counsel Ex. No. 8 and put your red line on it to show your cost of living?

(The Witness) Yes.

Q. People's Counsel Ex. No. 9 as I understand is an attempt to put on a chart the decreases that have occurred in 1927 each day of the week so as to show on which days of the week the loss has been heaviest, isn't that right? A. Yes.

Q. As a matter of fact what is your best day of the week always? A. Saturday usually.

Q. And your worst day of the week? A. Sunday at the present time.

Q. And do the others usually run about the same, or s there much noticeable difference? A. Monday is usualy a little better than the other days, but the others run about the same.

Q. So ordinarily Saturday is your big day and Sunday is your worst day, by very much, isn't it? A. Yes.

Q. And the others don't run very far apart? I guess this is not a chart showing how your days run this is a chart locating the falling off of this year, or attempting to do so? A. That's right, yes, sir.

Q. Mr. Markell has just handed me a pamphlet that I believe bears on the same trend. Is there anything in that you want to give the Commission in reference to the volume of sales?

(Mr. Clark) What is that pamphlet called?

(Mr. Howard) The Retail and Wholesale Trade of Baltimore, Md., being a detailed report on sales, merchandise outlets number of establishments, employees wages and inventoried based on a census conducted by the United States Bureau of the Census issued in Washington, August, 1927.

(The Witness) I think this is the one Mr. Markell referred to the other day showing the amount spent for automobiles and automobile accessories, which are the third item spent in Baltimore.

(Mr. Clark) On what pages of the book is that information on?

(Mr. Markell) It's pointed out on page 42 and page 40 and some of the earlier pages you will find the percentages for gasoline and things of that kind.

(Mr. Howard) Will you file that pamphlet?

NOTE: Pamphlet above referred to is here filed in evidence and marked Applicant's Exhibit No. 21.

Q. I believe Ex. 10 and 11 filed by People's Counsel, consisted of various reports of publications and articles? A. Yes. No. 10 was the Baltimore Asso. of Commerce monthly report and No. 11 I believe was the U. S. Daily of August 31st.

Q. You have no special comments on those, I presume? A. No.

Q. Now, Ex. No. 12 is the first of the exhibits that was filed by Mr. Nodder. That is a statement made up from your Annual Reports to the Commission, isn't it? A. Yes.

Q. Showing your income and surplus accounts, of 1920 to 1926, inclusive? A. Yes.

Q. Have you any comments to make on that or anything to say about it? A. From that Mr. Nodder drew the conclusion that our operating costs per car mile were gradually increasing without stating that during this period our weights of cars have been gradually increasing because of the fact that we have been taking off of our lines, just as far as possible our old light single truck cars, also during this time our wages have increased 6% and also during this time, we have lost the effect of power contract made in 1911, giving us that cheap power.

Q. Let's get that clear? Those last two items, the loss of your cheaper power contract and the increase in wages, are items that do go to make the cost of car miles more, aren't they? A. Yes.

Q. The item of the increase of the weight of cars, how about that? Does that make it a fair basis of comparison, to take the lighter cars of five years ago and compare them with what you say are the heavier cars of the present day? A. No, it does not, because in our attempt to give the better service to the people of Baltimore, we have discarded just as far as we possibly can our single truck cars, replacing them with heavier cars which cost more to operate.

Q. They carry more people too, don't they? A. Carry more people and cost more per car mile to operate.

Q. For your comment on that then, it doesn't make any increase on the allowance on the weight and size of your cars? A. It does not.

Q. And in the second place such increase as there is is largely accounted for by the rates in wages and the change in your power contract? A. Yes, sir.

Q. Now exhibit No. 13 of People's Counsel that is an attempt to derive the average ratio of your last six

months to the first six months over the years 1920 to 1926, so as to use it as a base to form some prediction as to what your income of the last six months of this year will be based, on the first six months of this year, is that right? A. That is right.

Q. Have you any comment to make on it? A. Well, were the trends of business comparable this year with previous years the method would be all right, but the trend of business in the last few months, has been so different that we feel it's absolutely impossible to figure that way in order to derive a result.

For instance, if you take the years 1923 to 1926, inclusive, and take the first quarter you might find a deficit all thru that first quarter from 1923 down, we will take, 80 thousand, 56 thousand, 52 thousand, four thousand, and 23 thousand, not so materially different, but when you come to the second quarter and take the same years, you will see profit in '23, of 68 thousand, a deficit in '24 of nine, a profit in '25 of 12, a profit in '26 of 54, but a deficity in '27 of 38 thousand.

If you take the months of July and August, using August as estimated at 30 thousand, and unfortunately our preliminary reports look like we are going to fall below the 30 thousand estimate, it shows for those two months, 1923, 146 thousand; 1924, 150 thousand; 1925, 137 thousand, 1926, 130 thousand and this year only 66 thousand, showing, I think, conclusively that you cannot take this form of comparison and produce from them what the result will be this year.

Again you take 1920 to 1926, the second three months' comparison, with the first three months, we find 190% of the first three months, but if you take the second three months only this year, we only find 91% of the first three months, again I feel showing the trend is such that you cannot use the former years as the proper basis for prediction.

Q. Your slump this year that has alarmed you didn't set in January first? A. It did not.

Q. Later? A. Several months later.

Q. And in any aggravated form considerably later? A. Yes.

Q. You are not getting the trend when you take the first three months in order to arrive at the per cent for the remaining six months; you are not allowing for the special feature that this year has shown? A. I think you do not get the trend.

Q. Isn't this also true? In making an estimate for 1927 no account whatever is taken of that item of $120,000.00 increased power costs that you have talked about, and of $120,000.00 addition to your accident account, and $75,000.00 additional taxes? They are ignored, aren't they? A. They are ignored, yes, sir.

Q. And by a proper method of accounting, they wouldn't be deducted from the last half only; they would be deducted from each and every month of the whole year, shouldn't they? A. They should have been prorated, yes.

Q. What was your estimate of 1927 earnings if you got no relief? A. $489,000.00 I believe.

Q. Now, take that figure at the foot there of 1927, based on lowest percentage of 744, if you take the two items of $120,000.00 for increased power cost and $120,000.00 for accident, you get very near your estimate, don't you? A. That gives $429,000.00.

Q. You are subtracting taxes too? A. Yes.

Q. Now Exhibit No. 14, that is, People's Counsel Exhibit in reference to your taxes, isn't it? A. Yes, sir.

Q. I think you have already, since you were put on for re-examination, have testified about that increases in taxes, is there anything else in this table that you think needs attention? A. I think not excepting I might say Exhibit 14, the third sheet mention was made the other day about some inconsistency in our figures of showing $472,000.00 here as the net income as to income taxes for the last six months, I want to say that that was figured out before we found out definitely where we were going and should have been revised.

(Mr. Tingley) When was it figured out?

(The Witness) It was figured out in early August.

Q. Which exhibit are you speaking of? A. 14C.

(Mr. Tingley) The application was filed August first?

(The Witness) August first, yes.

Q. Now, we come to the exhibits that were filed today. The first of those is Exhibit No. 15 which is a statement intended to show how many free tickets or tickets entitling the holders to free passes were issued by the company? A. Yes.

Q. Now, first of all are these pass books good until used or have they any expiration date on them? A. They are good during the year only.

Q. Hence in so far as the book is not used during the calendar year, it can't be used after that, can it? A. No.

Q. Have you any way then of telling what actual use of such things as are listed here is as compared with the number of books or tickets that you issue? A. Yes, the cashier's department audits all tickets returned and find that while there were five million six hundred and seventy-four thousand eight hundred and ninety-three issued.

Q. That's for all purposes? A. For all purposes, there were only four million eight hundred and seventy-six thousand and some number taken up and used.

Q. Are those approximate figures? A. They are actual figures. Counted tickets.

Q. There is no difficulty in getting at them? A. No, they are audited like the cash returns are.

Q. And were those figures put at the disposal of People's Counsel? A. Yes, Mr. Nodder had them.

Q. So then in 1926 only four million eight hundred and odd thousand were used of all these tickets? A. That's right.

Q. And is that true of previous years? A. That would be true, yes, sir. 1926 I find 4,876,952 used; 1925 used tickets 5,182,383; 1924 used 5,238,528; 1923 used 5,080,-688, 1922 used 5,006,405; 1921 used 5,152,594, showing 1926 materially less than any of the previous years read.

Q. Now, I think it has already been explained that transfers are not used in connection with free tickets. A. That's true. No transfers are issued on free tickets.

Q. So a man to use free tickets of any kind has to give a ticket or a coupon from his book each time he changes from one car to another? A. Yes, sir.

Q. Now, let's take the different kinds of tickets, that are shown there? In the first place you issue pass books to your employees, don't you? A. Yes, sir, clerical help.

Q. Are you familiar with the practice that prevails in other street railway companies in this country? A. So far as I know all of them do the same thing.

Q. All of them do the same thing, do they? A. Yes.

Q. They all issue pass books to their employees? A. Yes, sir.

Q. Suppose you did not give your employees that transportation, what if any would be the effect on wages? A. Probably have effect or a tendency in an increased way.

(Mr. Tingley) You increased them anyhow?

(The Witness) We are, but there is also a point when we are giving free transportation, that we do not increase as much.

Q. So you do in that respect, what is done, so far as you know, by all the street railway companies in this country? A. Yes.

(The Chairman) Does that free passenger employee include the employee alone or his family?

(The Witness) Just the employee alone. Not the family.

Q. You don't in any case issue any free transportation to the families? A. No, we do not.

Q. It's purely personal and confined to the man himself who is your employee? A. That's true.

Q. And these different kinds of pass books that you have here that are issued are devised I suppose to keep

some check on it and hold it down to a proper limit? A. That's it, yes.

Q. Otherwise you would simply have one kind? A. Yes.

Q. Is that the reason why you divide them into male and female? A. Yes, and also morning and evening.

Q. Now, as to the police and fire department, has that always been done, as far as you know by the United Railways since its formation? A. Always here and in other cities as far as I know. It's required by law, I think.

Q. It is the practice in other cities then is it? A. Yes, sir.

Q. Why is any distinction made between the plain clothes men and the regular police? If I understand the regular police are allowed to ride because they have a uniform on and don't need a pass, is that it? A. And on his badge.

Q. The same is true with the Firemen? A. Yes.

Q. Why couldn't a similar method be applied in the case of a plain clothes man? A. A plain clothes don't want to divulge that he is in a service of that type.

Q. Are these tickets issued on the requisition of the Police Department? A. Marshall of Police.

Q. Now, the last item you have here are tickets issued to Park Commissioners and employees. Is the issuance of those tickets or a furnishing of that transportation provided for in the contracts in each case with the park concessioner? A. It is.

(Mr. Tingley) Who draws the contract, Mr. Emmons?

(The Witness) Albert Stuart usually. That's the first time I heard it wasn't legal this morning.

(Mr. Tingley) It isn't provided for in the law.

(Mr. Howard) We differ with that. The law says:

"Transporting persons or property as incident to or

connected with contracts for construction, operation or maintenance."

I think these contracts have directly to do with the operation and maintenance of a railway.

(Mr. Tingley) The operation of the old mill isn't an operation of maintenance, or the operation of the Roller Coaster.

Q. Has the operation of the Old Mill and Roller Coaster anything to do with the maintenance of the operation of the United Railways? A. It's part of the operation of the park and the park is part of the operation of the United Railways.

Q. Who operates the park? A. We do.

Q. You own it don't you? A. Own it and operate it.

Q. And operate everything that's in it? Why do you own and operate such a thing with a park with a Roller Coaster in it and what's the purpose of it? A. For the purpose of attracting business.

Q. Not mainly for the idea of going into that business? A. No, to attract business on the street railway line.

Q. And has that been done in other cities too? A. Every city in the country have had their parks.

Q. So except for the fact that it's divided off by stock ownership, the stock is owned by the United isn't it? A. There is no stock owned. The park is directly owned by the United.

Q. So its in connection with the operation of that park as a part of the United system and under a contract made with these concessioners or with men that are there that you give them this free transportation? A. It is, yes, sir.

(Mr. Tingley) The contract is being drawn by your legal department?

(The Witness) Yes.

(The Chairman) The United Railways owns the property at River View, but rents it to somebody else I believe.

(The Witness) The River View Company owns that Mr. Chairman. The United Railway owns the River View Company stock.

(The Chairman) It's the same thing. But you don't operate River View; you lease that to somebody else, Fitzsimmons, I believe?

(The Witness) Fitzsimmons, yes.

(The Chairman) Does his concessionaires get the same free tickets?

(The Witness) Yes, that's also provided in the contract.

Q. Have you anything further to say about that exhibit in reference to free transportation? A. I think we should say this; that Mr. Nodder's figures on what we might get are extravagantly overdrawn because in the first place, he has taken the total number issued and multiplied by seven and a half cents when there is 800,000 less used. He has taken in consideration nothing about the transfers used at all. He hasn't taken into consideration the law requires the transportation of Police and Firemen. He hasn't taken into consideration the Park Tax itself that would have to be deducted from any amount received, and I might say that the railroads have the custom and have had for a time back not only to issue passes to employees, but to their families, not only on their own lines but to get them on other lines.

Q. Has that been stopped during emergencies? A. I never knew of it being stopped.

Q. No Exhibit No. 16 then of People's Counsel undertakes to show a certain duplication of interest that occurred in connection with your note issue of two and a half million dollars. That was made you say in March last of this year? A. Yes.

Q. I want you to tell the Commission just why any such duplication occurred, how far it was the subject of consideration before you did it, and what your reasons were for doing what you did do? A. We knew that on August first we had two and a half million dollars of notes coming due, and we began to find, after we started

in the year, that business was beginning to fall off; the market conditions were fairly good and we felt it was advisable and good insurance even if it did cost us some money to get that money in hand and in the bank.

Q. Suppose you had waited until August first to sell those notes, could you have realized as good a price for them? A. I certainly think we could not.

Q. Would the difference have been greater or less than this duplication of? A. I think it would have been greater than the duplication of interest.

(Commissioner Harper) What rate of interest did you receive on your deposits?

(The Witness) Four per cent.

Q. You said one reason why you issued these notes in March instead of waiting until August, was because you apprehended the company was not doing so well and wouldn't be able to make an issue later on? A. Yes, and the money market was good at that time and we thought we ought to take advantage of it.

(Mr. Tingley) Was the fare application under contemplation at that time Mr. Emmons?

(The Witness) Not at that time, but it was a short time later.

(The Witness) A short time after March.

(The Witness) We began actively to getting into the knowledge that we would probably have to do it some time in June.

Q. This had all been done, hadn't it? A. This had all been done.

Q. Was or was not the time of issue considered by your executive committee or board? A. It was, yes.

Q. Were the pros and cons debated? A. They were.

Q. Why did they decide to have this duplication to this extent of this interest? A. They felt that it was very advisable not to approach too close to the date of maturity of the old notes, August first, and felt they should take advantage of the money market at that time.

Q. And as this exhibit shows the net amount of duplication, after allowing for the interest you got on the money in bank, was about $18,000.00? A. Yes.

Q. Do you still think that was good financing? A. We are certainly very glad we did it.

Q. Exhibit No. 17 of People's Counsel is a statement of accident and damage accounts? A. I referred to that a while ago.

Q. You have nothing further to add on that? A. Nothing further than what I referred to.

Q. Now Exhibit 18 of People's Counsel, that exhibit is a statement to show your extravagance in painting cars bright colors. Will you look at it and tell the Commission just what it amounts to. A. The fact is, I think the Commission will be with me, that ever since we adopted the red as an economical color we have been criticised very severely because of the color.

Q. Just in that connection, I suppose the cheapest color you could adopt would be the freight car red, because the railroads have all adopted that as the cheapest of freight cars? A. Probably would any they spray it on. We therefore did what a great many other cities have done and are now doing, making some color tests, not only to try to have the people notice the street cars and to ride them and to get them to take to the colors they like, but in order to find if there is a change of color that will stand up under the weather and will wash and will wear well. The ultimate cost is not the first cost of painting at any rate It is the repeated cost of painting. We painted last year 1,267 cars in the paint shop.

Q. Not in these fancy colors? A. No. We had these thirteen I think it is, eleven colors other than the standard color, which cost all the way from $85.00 for a single car up to $150.00 for a double car, and I am sure that it won't take much thought to know that it costs more to paint one individual car originally that to paint a thousand or twelve hundred of the same kind. For instance, our semi-convertible cars in 1923 themselves cost us $160.40 to paint per car. By means of rescheduling of the paint shop and rather turning it up side down——

(Mr. Tingley) That was interior and exterior wasn't it?

(The Witness) No, this was just exterior, because 1927 we have that same figure down to $92.55. The average per car in 1923 was $145.38; the average per car this year and that includes the articulated car, is $77.65. I certainly would not labor under the criticism, if I saw my paint costs were going up $50,000.00 a year, that I would select any paint or design that would cost me that.

Q. What have you done in fact? There are ten cars here that you have painted in these colors? A. There are eleven cars and it costs us about $440.00, I think, to make that experiment.

Q. When did you make that experiment? A. We started in the beginning of the year and had these cars all out at Easter time.

Q. You did it before this last slump came? A. Yes.

Q. Had you decided that you were going to paint all your cars any of those fancy colors? A. We have not come to a definite conclusion as yet.

Q. Now, Mr. Emmons, you testified on direct examination to the amount of loans that the company had out with banks and had to meet in the near future? I don't know whether you covered the whole year of 1927? A. I think I did not. I was questioned whether we might go into bankruptcy if we didn't get the September and October loan, but I wanted to repeat this "That it is a serious question as to what we owe the banks and what the banks will do when the notes fall due. We owe the banks $50,000.00 in this month."

Q. You mean by that falling due in this month? A. We have $50,000.00 falling due in this month. We in October have $650,000.00 falling due. In November we have $630,000.00 falling due and in December we have $1,040,000.00 falling due, a total at the present time of $2,370,000.00.

Q. Falling due before the end of this year 1927? A. Before the end of this year. I can't tell what the banks may say if we are not put in a credit position when we

go to them to renew those notes. We think it's most serious that we should have a position like this facing us with the falling off in earnings that we are having now.

(Mr. Tingley) Are you renewing those notes or paying them?

(The Witness) We are not paying them. We are not earning the money to pay them.

Q. Would you look at your memorandum? You said $650,000.00 in October and $630,000.00 in November. The memorandum I have has those figures reversed? A. $650,000.00 in October is correct.

Q. And $630,000.00 in November? A. That's right.

CROSS-EXAMINATION.

(By Mr. Tingley) Q. Mr. Emmons, I want to see how close you still are to the Trolley News of August 16, 1927:

"Baltimore is a city of comparatively low living costs and the wages of the carmen as well as the wages of many other workers have been based upon that fact."

That's correct, isn't it? A. That's right. That's the reason it is so low.

Q. (Reading) "The men in Wilmington, Delaware, get 56 cents an hour, while those of the Washington, D. C., street cars get 58 cents an hour. Even so the earning possibilities in Baltimore under its operating conditions are greater than other cities, even at a higher rate of pay." That's true, isn't it? A. I think they had in mind the eight-hour cities.

Q. Yes. That is a true statement? A. Yes.

Q. (Reading) "Even at 53 cents an hour, the wage rate of Baltimore carmen have increased faster than the cost of living in Baltimore." That's correct, isn't it?

A. Yes.

Q. This income tax estimate for 1927 you say that was made during the first few days of August? A. I think

it was, yes. Mr. Graston says as soon as we closed June up that was made. That would be in July some time.

Q. What periods of July would that be? If it was prepared during July, the petition in this case was filed August first, wasn't it? A. It was, yes.

Q. The exhibits were being prepared in July? A. The latter part of July.

Q. How do you account for the fact that the auditing department of the company should estimate that the income of the last six months of the year would show such a discrepancy from the exhibits presented to the Commission? A. I think that was just a hopeful situation that wasn't checked up.

Q. So pessimistic that they haven't been checked up? A. They have been more than checked up I think with the way August is apparently going.

Q. Do you think August showed a worse situation than July? A. It looks now, with preliminary figures, that August is going to be very, very low.

Q. Does it show a worse situation than July? A. Yes, a great deal.

Q. How about the first days of September? A. I was talking about the net for August. Of course, we do not know anything about what the net for September will be.

Q. August only showed a decline of 3.73 of the passenger revenue? A. Taking it as a month that way.

Q. And September has shown less than 3 per cent. thus far? A. You had that figure this morning.

Q. Do you think it is fairer to take the company's experience over a period of six or seven years in anticipating in what the revenues for the last six months of any given year will be or to take a period of three months during the summer of that year? A. At the present time, with the trend so very different from what they have been for the last six years, I think it's quite unsafe to take the experience of the last six years.

Q. Haven't any of those years showed a period of decline comparable to this one? A. 1921 showed some de-

cline, yes, but I think we all know or we all agree that that was rather an industrial decline and not an automobile decline.

Q. Do you think it is fairer to require free riders, who aren't riding free under all requirements of law, to pay prior to asking for an emergency increase in the fare from seven and a half to ten cents, or to ask for an increase? A. I think if we require our employees to pay we would have an immediate increase in wage request. They would make that request and we would still be higher.

Q. There wages would still be above the cost of living, wouldn't they? A. If you compare it that way, but I don't think that's fair way to compare it.

Q. But the Trolley News thought it was? A. They said so.

Q. As to this classification into which your free tickets are divided, have you any data which shows the amount of used tickets by classes for this year or the past year? A. By classes? I think they are not counted that way.

Q. And that information is not available is it? A. No, that would be very expensive auditing.

Q. The reason, Mr. Nodder used it as he did, as he explained, the information was not available. A. But he had the available total at hand which would have been much fairer to use that total figure.

Q. But he used that in his exhibits? A. He didn't until he was asked about it. He could give the total four million eight instead of five million six.

Q. Are you serious in your position that passes to concessionaires and employees of Bay Shore and Gwynn Oak are authorized by the Public Service Commission law? A. I am not a lawyer.

(Mr. Howard) You always thought they were.

(The Witness) I certainly did, and my contracts are prepared by one of our lawyers.

Q. Do you seriously think that the public prefers colored cars at a ten cent rate to plain red cars at 7½ cents?

A. Not at all. If coloring the cars had that effect I am sure we would not paint them that way.

Q. Do you think the change in color of cars has anything to do with the decline of revenue passengers? A. We hoped it would increase rather than make them decline.

Q. You said the experiment was made around Easter time this year? A. We had the so-called Easter Parade.

Q. And Easter was what day this year? A. I don't remember.

Q. Wasn't it April 16th? A. It was about that time.

Q. I think you stated in your re-direct testimony that there was no slump in the company's affairs at that time, is that correct? A. Not prior to that time. January was pretty good and February was pretty good. March began to go down, but the particular slump was in May, June and July and August.

(Mr. Tingley) That's all.

CROSS-EXAMINATION (continued)

(By Mr. Clark) Q. Mr. Emmons, just one or two questions, not that they have a thing to do with the emergency, but I want the information at any rate?

Is there any difference in your opinion between the economic limit of fare and the fare that the traffic will bear? Are they just two ways of expressing the same thing? A. I think they are about the same.

Q. When do you think the economic limit is reached or how it is indicated? By the decrease in traffic or the increase in return? A. If the decrease in return, if you made no return on an increased fare that might show something, but as I have said, and said time and time again it depends entirely on the trend of business at the time. You might have an increased fare, or the trend of business would be so downward that an increased fare would not make up what you had lost. That would look like you had reached the limit, but you have not.

The same way again you might have an increased fare

on a rising trend of business, and you have increased passengers nevertheless with a greatly increased gross revenue.

Q. I should have said decreased returns instead of increase. Then you think that the fare really has nothing to do with diminishing traffic over lines? A. I think all these different cities I have read from would show that it's the trend of business at the time the fare is changed whether there is an increase or decrease in revenue passengers.

(Mr. Tingley) Regardless of the amount of change?

(The Witness) I think so.

Q. And you would look to that factor in determining when the economic limit of fare was reached then?

(Mr. Howard) To what factor?

(Mr. Clark) Trend of business.

A. Trend of business wouldn't show. Now, for instance, if we put an increased fare on a falling trend of business and did not even at that get an increased revenue, that wouldn't say the economic limit was reached because of that reason.

(Mr. Tingley) How can you tell when it is reached?

(The Witness) I don't know. The only thing is we would feel that ten cents is the United States coinage that is convenient to use and something that should be used, not more than that, so at least an initial ride. Now then it gets beyond that there has to be some question of zoning and some different arrangement.

(Mr. Tingley) It's more or less instinctive reaction on the part of street railway operating men as to when that point is reached, isn't it? There is no definite indication?

(Mr. Howard) You mean no experience to judge by. Is that what you mean?

(Mr. Tingley) I haven't asked him that. Both Mr. Clark and I asked him what the indications would be that would lead a street railway executive to think that

the point of diminishing returns or the point of decreasing returns had been reached.

(Mr. Howard) By a fare already charged you mean?

(Mr. Tingley) No, by a proposed increase or by a fare to be in effect or by a fare to be put into effect, and he stated that you couldn't arrive at that conclusion from a loss or an increase in revenue passengers or in passenger revenue because that was attributable wholly to economic conditions.

(Mr. Howard) If you hadn't put it in effect yet, how could you?

(Mr. Tingley) By studying statistics in other cities as Mr. Emmons has done, and what we have asked him, and what I would like to have the witness answer and not by counsel, what does indicate when the economic limits have been reached.

(Mr. Howard) Do you man as to a fare already put into effect or as to whether the economic limit is going to be reached by the fare that you are going to put into effect?

(Mr. Tingley) Either way.

(The Witness) We may look at it this way. A railways system as the United Railways appear to do the very best, to give the public the very best service at a minimum cost. Now if you are going to answer broadly in that way you might show you could put the fare to fifty cents and still get a gross increase in revenue. I say that would be absolutely all wrong. I say it's the service to the people at the least possible cost. Now I do not believe that ten cents is above the limit of what the people will eventually need to pay.

(Mr. Tingley) But you think ten cents is the limit?

(The Witness) I would say, and I did say before, that when you get above ten cents we will have to find some other system of zoning and let the long rider begin to pay for his long ride.

(Mr. Tingley) Why?

(The Witness) Because I think ten cents is looked upon in many ways today as the nickel before.

(Mr. Tingley) It is a matter of instinctive reaction.

(The Witness) No, it's a matter of feeling that that's a coin of the United States, that that's all we charge for the short rider. Beyond that the long rider should begin to pay more for his ride.

Q. (By Mr. Clark) Mr. Emmons, is there such a thing as a gouge limit? I am asking the question seriously.

(Mr. Howard) What do you mean by that Mr. Clark?

(Mr. Clark) I will define what I mean. It is possible to put the fare so high that necessitous riders only will use your line and by the use of your line by the necessitious riders there will be a large increase in the net returns. I would call that the gouge limit fare as distinguished from the economic limit of fare.

Q. (By Mr. Clark) Now, Mr. Emmons, would you say that that gouge or unfair limit, put it as you please, would be reached at the ten cents? A. I don't think the word gouge is a proper word to use, though its been quoted a good deal.

Q. I don't know any more expressive word and that's my word that I am using?

(Mr. Tingley) Mr. Emmons feels that he won't use it.

Q. But Mr. Emmons is sold on that ten cent fare, and a ten cent fare probably would result in necessitous riding and necessitous riding only, and yet you might get a very high increase in return? A. I think you are all wrong on that.

Q. I would call that beyond the economic limit of fare? A. I don't think any more of that than you pay ten cents for your cigar that you used to pay a nickel for.

Q. Has the diminishing traffic anything to do with the economic limit of charge? A. It depends upon the business trend.

Q. Will you say that it hasn't? A. I will say that you couldn't pin the falling off in business altogether for any

continuous period on a fare unless we would go for instance to twenty-five or fifty cents, and then I would meet your word on that, but for a ten cent fare I think the word does not fit at all.

Q. In fixing freight charges, do you know that the I. C. C. is influenced by the charge that will diminish the traffic in a particular line of freight? A. They make the freight charge fit the needs of the companies, no matter what it might be. Shipments have to be made and companies have to pay it and the consumer would have to pay it in the end.

Q. Isn't the diminishing of traffic the test which they use as the value of the service to the shipper? A. No, I don't think so, because a shipper that has to ship his iron and steel, he is going to pay what the I. C. C. tells them to pay, and the I. C. C. is going to tell them to pay in accordance with the needs of the railroads.

Q. You take the position as an experienced railroad manager that you don't know where to look for economic limit of fare in the operation of your road. Instinct only? A. At the present time we haven't found it.

Q. Now Mr. Emmons when you prematurely financed the maturity of those August notes, you are sure you did not have in mind this present plea to the Commission? A. I said we did not, and we did not.

Q. You weren't fearful of the poor position which you are now presenting to the Commission? A. Not at that time.

Q. When did you first determine as a matter of policy upon the preferred stock issue? A. We haven't determined upon it as yet.

Q. You got the authority didn't you? A. We haven't. The law gives the right to issue preferred stock without increased taxes and we would like to be in a credit position to let us take advantage of it.

Q. You knew nothing about the introduction of the bill? A. Of course we did. We knew about all bills down at Annapolis.

Q. And you had nothing to do with the introduction? A. We did not introduce it.

Q. Did you have anything to do with it? A. We knew it was being drafted and we knew it was going to be introduced, yes, we knew it was going to be introduced.

Q. Did you encourage? A. We did.

Q. Did you suggest it? A. We did.

Q. Then it was the policy of the company. When did you suggest it? A. It was during the Legislature in January.

Q. And your policy was if possible to create a base for the marketing of such an issue through an increased return, wasn't it? A. I didn't get your question.

Q. Your policy was to have your return jacked up materially in order to furnish a basis for the marketing of preferred stock? A. I should say that is not the purpose of our being here if that's what you are trying to say. Not for a minute.

Q. Could you under existing conditions finance a preferred stock issue? A. We certainly could not. I don't think we could.

Q. Could you under conditions which have existed since you exchanged your old preferred for your income bonds at any time since then, have you been in a position to market preferred stock to an advantage? A. I doubt it.

(Mr. Howard) You have with common stock, haven't you?

(Mr. Clark) How much common stock have you issued since then? A. I think about five million dollars.

Q. Common stock? A. That's history back of my time, Mr. Clark.

Q. We will only go back to 1920. That seems to be the limit of backward thought in this case. Since 1920 up to the present time have you been in position to market preferred stock to advantage? A. Not to advantage, no.

Q. In order to so market preferred stock, you would

have to make a different income showing, wouldn't you? A. We would have to have a better credit position and that requires a different income showing, yes.

Q. That's the reason you are here, isn't it? A. It is not. I said before it is not.

Q. I know you said it, but I can't see in your case where there is any substantial change in affairs. A. I certainly can.

Q. Your statement is then that your appearance now before the Commission has absolutely no connection with the fact that you want to issue preferred stock?

(Mr. Markell) That isn't what he said.

(The Witness) I said we are not here in order to issue preferred stock. I said we are here to get a position to give service to the people of Baltimore. We are here to ask to be put into a position of credit for our company.

CROSS-EXAMINATION (Continued).

By Mr. Toole:

Q. In asking for this ten cent fare, have you considered what it will mean for the working people who must use your lines and must pay that increased fare in order to get to work? People who get fifteen or eighteen dollars a week who have moved perhaps in the suburbs and who use up week by week all the wages they need? A. Mr. Toole we figured this: that the average working man, the crafts trade will work less minutes per day to pay their carfare to and from the city at a ten cent fare than they did when we had a five cent rate. Their wages have increased so very much. Now if you find people who have not had their wages doubled of course your statement would be right.

Q. You see Mr. Emmons there is a big difference. Whenever people talk about wages they take the building trades. Now there are a whole lot of other working people besides the building trades, men who work in various occupations, day laborers who often must go to work and find no work and come back and can't even earn a day's work. I think that lots of these people are working for

from fifteen to eighteen dollars a week. Now if you charge them two and a half cents more that's five cents a day.

A. You mean men are working at that rate? A. Of course lots of them are?

A. I don't know of them. We haven't any of that kind. I think you will find very few men working for that rate.

Q. There are lots of men working for $18.00 a week and $20.00 a week, you will find lots of them working today, and especially lots of people are reducing the hours. What I mean a lot of firms are working short time today? A. That's but a temporary thing.

Q. It might last two or three years, and it might last as long as the panic of 1920. Do you think we are entering a period of prosperity or otherwise? A. I feel there is not any particular depression at this time. I don't feel there is any particular change. These different magazines that we have to follow seem to be fairly optimistic about things.

Q. Isn't it a fact that they said the same thing in 1921? They were saying that until the Labor Department issued a bulletin that there were over six million people out of work at that time? A. The Baltimore Association of Commerce seems to feel there are not so many out of employment here.

Q. As a matter of fact don't they try to give business a sort of an absent treatment, Christian Science treatment? A. I don't know.

Q. What is it that fellow said about a little better every day? A. Dr. Coue.

Q. Yes. Well that don't always work.

(The Chairman) Day by day and in every way, we are getting better and better.

(Mr. Howard) Have you found that in your troubles, Mr. Emmons?

(The Witness) I wish we were.

Q. Now don't you consider that a large part of your fall-

ing off, while some is due to automobiles, don't you think a large part is due to the falling off in business? A. No, I think the major part is automobiles, and therefore I think we have to find a new level.

Q. Now one thing, I put it to my wife night before last and asked her her opinion why didn't people travel for pleasure any more. She said she wouldn't ride for pleasure because she would have to stand up. Do you think that that has anything to do with it? A. No, I think the people who ride for pleasure Mr. Toole that they wouldn't stand up. Take your wife out some night. You will find plenty of seats.

Q. You think there is enough seats for people to ride in the evening? A. Yes indeed.

Q. From about seven o'clock on. A. Yes you can get a nice ride.

(Examination concluded).

(Mr. Howard) The only thing we have is some letters to file and that closes our case.

Note: The Commission then adjourned for the purpose of taking a recess.

AFTER RECESS.

(Mr. Howard) I desire to file with the Commission, I won't take time to read it, a petition of 96 Banks and Trust Companies of the State urging a much more substantial margin of credit.

(Mr. Tingley) The banks are all bond holders.

(Mr. Howard) I think they are. The most of them anyway.

(Mr. Tingley) They say so in their petition, don't they?

(Mr. Howard) And a letter from Mr. Austin McLannahan, a member of the Savings Bank of Baltimore, to the same effect.

Thereupon—

CARVILLE D. BENSON,

a witness of lawful age, produced on his own behalf, having first been duly sworn, according to law, was examined and testified as follows:

(The Witness) In the first place, Mr. Chairman, I would like to file as part of my record the exhibit that I filed with my petition, which is this chart, and mark it Halethorpe Exhibit A, and the tabulation that goes with it, marked Halethorpe Exhibit B.

NOTE: Chart and tabulation above referred to are here filed in evidence and marked Halethorpe Exhibit A and Halethorpe Exhibit B.

(The Witness) As this chart and exhibit speak largely for themselves, and I explained them in the opening statement, I am going to refer to them very little.

There is one phase of the question of the rate to Halethorpe that has not been controverted by testimony but rather by suggestion and that is that Halethorpe is out in the county. As a matter of fact the City Line was never used as a basis for fare zones.

Before the annexation of 1918 the cars for one fare extended to Roland Park, which was in the county, they extended to Overlea which was well out in the county. They extended for Hamilton, which was well in the county. If my recollection serves me right they were also extended to Ten Hills, before annexation in 1918 and they went out on the Frederick Road some little distance beyond the county line. Even on the Halethorpe line, before annexation, they extended to Primrose Avenue, which doesn't show on the sketch, but it was beyond St. Mary's Industrial School, about a quarter a mile and was in the county some distance.

Now since annexation, while I was led to believe that the city would have some effect upon extending zones, I find that there are these lines extended beyond the city line by material distances. Lorraine Cemetery recently extended, according to the testimony of the President of the railroad, to gratify Mr. Clark and his friends. Now

that road, even at the city line before this recent extension, had a greater haul of mileage for one fare than the Halethorpe line had for two. Lakeside is now within the one fare zone, and I should say there is at least a mile greater haul there than there is for two on the Halethorpe line.

Dundalk Junction extends considerably over a mile beyond the city line. And the haul even to the city line is greater even for one fare than it is for Halethorpe for two. The line out Harford Road to Carney, extends for one fare to Taylor Avenue, ⅜'s, one half mile beyond the city line, and that line is a mile further for one fare than the Halethorpe line is for two. Now the Woodlawn line is about a mile or more beyond the city line, and it's a mile and a quarter more longer haul for one far than the Halethorpe line is for two.

Of course the exaggerated case is Slade Avenue, but which does not extend beyond the city line. That's on the Park Heights Avenue line, but that has a haul even in the city of a mile and a half to two miles longer for one fare than the Halethorpe line for two. But I call attention to this that even before annexation, this entire territory was considered as a metropolitan area for the purpose of street car transportation, and only in case where they wanted to use it as an excuse for not extending it as they apparently do at Halethorpe, has there been any attention to where the city line is.

Now, from 1920 to 1923, I got from the Building Inspector, who is here, and I am running over these without putting separate witnesses on, I think I can do it more rapidly, there were 329 building permits by people who use this Halethorpe line. From 1920 to date there are 636 such permits.

The Arbutus Land Company has erected sold in the last, about four years, started in the spring before my father died, 27 houses. Rittenhouse and Kelbaugh, who are building on the Arbutus land property, have built 51 additional. They had 60 lots remaining. They have three completed houses unsold and three uncompleted. George Lincolnson built and sold in the same period about 24 houses. The Northwest Halethorpe, there

have been built and sold 24, five completed unsold and two under construction, and at Leeds we have 11 in the last 18 months built and sold, one completed unsold and two nearly completed and unsold.

I mentioned these particular building companies because directly or indirectly I am interested in all of them. My father and I and Mr. Rittenhouse started the Arbutus Land Company, and after my father's death I had to take charge of that and push it through.

The Northwest Halethorpe Corporation I organized and my son is operating it for me, and the Benson Link Corporation is a combination of the Link boys and my son and myself.

There are other builders out there that are operating and developers besides those that I have mentioned, and in addition to the effect that it would have upon us who are developing, which I really look upon as very serious, because while I recognize that if the Commission finds that it's necessary to meet an emergency, it will be necessary to meet it and we are willing to carry our share of any burden that is placed there, but unless this Commission at once make an adjustment of our situation, then in the language of the President of the railroad, our situation will be beyond what is economically possible to handle.

We are working now under handicaps in selling property, I help to sell for the boys, I help to close contracts, when I can, and am active in all these corporations. I know that there are many sales that we can't make now because we are in competition with the Wells Construction Company, which is not Wells which the name implies, but Mr. Mopp controls it.

It has several developments in Baltimore, one runs through from the Frederick Road to Edmondson Avenue, within the one fare zone.

We find that people will buy property that is not as well constructed as ours, not as well located in many cases, simply because they will not go beyond one car fare.

Now whatever the emergency is, we feel that we shouldn't be compelled to carry our double share of any emergency or our double share of any rates, and that's what we have been doing up to now, and we feel that now this question is open, whether you call it emergency or not, that this injustice that has been done our community, contrary to the provisions of the Public Service Law should be remedied in this case and remedied now.

There is no question but that now there is an absolutely slowing up in sales, and we are slowing up in starting houses, because we know we would not be able to sell them should there be an increase in rates and still keep us on the two fares. It would mean an absolute stopping of development there and it might mean that we would have to sacrifice even the houses that we have built and haven't sold.

Now as to the people that we have sold, it may be harder than it is on us. We have sold a number of people on very small cash deposits. We have figured their financing for them, with no extra charge for second mortgage financing, we carry the second mortgages without any second charge additional to the 6% interest. Our profits are all tied up in second mortgages, and practically the cost of our property is tied up in second mortgages. Those people, many of them will tell you that they can pay $14.00 a week, some of them will say they can pay $15.00 but when you ask the man who says he can pay $14.00 to pay $14.50 he will tell you he can't do it or the woman of the house will tell you they can't do it. They work on a budget as economic, and as well planned in many cases as the budget of the United Railways, and they have to do it on their salary.

Now then if you double their increase, on them, there may be a condition that we will have to take back a good many of those properties, and those people will lose the equities they have established there.

Now there is just one other fact I want to call attention to, because while this may sound like argument, I think we have to present this as facts. The attorneys for the United may argue that if you take off this road

the second fare zone, although there is no evidence, they haven't put in any evidence on it, that you will take away all the profits of that section, is now paying.

That will not be literally true, because it isn't like cutting that off without any increase at all. If there is an increase in fare granted, that increase in fare will, if it is granted at ten cents, where they are now giving 15 cents in the full haul, there they use tokens and don't use tickets, it wouldn't be the whole thing, the 7½c. cut off, it would only be five cents of it cut off, because they would get the increase on the other end, and if you take the tokens plus the commutation, which would be 7½ plus about 4 and a fraction, it would be about 11½ or 12 cents, there would only be two cents difference as far as that particular line is concerned, that would be cut off and not the full seven and a half cents, cut off.

But, however the case may be, it seems to me absolutely clear that the United, and I think they recognize it, and I think we will be able to establish it in the law, that this Commission nor the United can testify any such excessive difference as exists, here.

I want to call Senator Harper's attention to the fact that the other day he said that the Carney second fare zone was shorter than our second fare zone. I believe I made the statement that it wasn't. I never thought of that because the Carney's first fare zone is so much longer than our two fares together, I overlooked that fact that their second fare was shorter than our second fare zone.

I am serious about this matter when I state it as my honest and sincere opinion that the Commission, if it should grant a two fare rate and not give us a single fare, that it would injure the United Railways and wreck us people along this line because we have had severe competition but this would be the blow that we simply couldn't stand. People are saying to us now, and my son is here and will tell you who is acting as a salesman, and I am repeating what he says, there is not much use going to people at all, because they say you have two fares now, and if it is increased to two fares that will be 40 cents a day. If you want visitors it will cost

visitors 40c and I have a family here who have four members in their family, who travel daily. It simply puts us in a position where the industrial situation is too much and——

(Mr. Tingley) You find that the amount of carfare does mean something to people?

(The Witness) Unquestionably it means something, but we have gotten along, but there is something in the point where it gets beyond where you can get along. However, we have gotten along with what we call a fare and a half to our customers. We have explained to them that we have some advantages there, and that that difference between 7½ and 12 isn't so much. We call it a fare and a half, but to double that it gets to a point where it stops.

Now I think as far as our people are concerned that all of our people would be delighted, and we could sell property there at a ten cent straight fare, but I don't believe we could sell it at a 20 cent straight fare. That is getting up to the price that used to be charged by the railroads even without competition. I mean without commutation. That's getting too high. I think there is a point where it gets to be prohibitive, and I think Mr. Emmons practically admits when you get beyond the ten cent fare, it has got to be adjusted by zones, and if you did adjust by zones then we would come in along with either the two five cents, or somewhere within reason.

(Mr. Tingley) It really comes to this, that the Halethorpe people would rather pay ten cents than 12, that's perfectly natural?

(The Witness) Sure. We feel like we ought to pay ten cents, and we feel that if the distinguished gentleman who is representing the people felt that if he was representing Halethorpe, he would have been with us long ago when this other adjustment was made, and extensions were given to such places as Taylor Avenue and to Lakeside and to Lorraine Cemetery, that he wouldn't have permitted that without taking care of the neighborhood of Halethorpe.

(Mr. Tingley) Would the people out there rather pay ten cents than 7½ cents?

(The Witness) Seven and a half cents to Baltimore?

(Mr. Tingley) Yes.

(The Witness) Well, I presume they would rather pay nothing if you want to get at that.

(Mr. Tingley) Some of them do pay nothing, don't they?

(The Witness) None that I know of.

(Mr. Tingley) Don't any of them ride in an automobile?

(The Witness) Well, I don't think they ride for nothing.

(Mr. Tingley) They do as far as the United is concerned?

(The Witness) Oh, yes.

CROSS-EXAMINATION.

By Mr. Howard:

Q. Mr. Benson, aren't you assuming there will be no commutation rates on an increased fare, if granted, in these proceedings? A. No, I am not.

Q. You said it would be doubled, and you were comparing 7½c plus 4½c with two tens? A. No, I did not.

I think I tried to show that if you add a 7½ plus 4½, you got about 12 didn't I, and ten I said you would get?

Q. You would pay two tens? A. No, I said you would get ten cents assuming the ten cent fare, you would get ten cents for what you are now getting for 12. I thought I had taken into consideration the commutation rates. I said the occasional passenger, the visitor, the people that don't buy commutation tickets, don't have enough occasion to buy commutation tickets, and the people of Halethorpe are just like other people, they have to have their mothers and fathers and relatives visit them, and they don't want to have it put on a basis

that it will be so expensive that they will cut down their visits, or won't attend. Now they can come out there now for 15c, two tokens, it would then be if it was straight ten cents, why it would be 20c to get to Halethorpe.

Q. In order to compare that with a token commutation rate, you ought to compare it with a commutation rate on the other, oughtn't you? A. I should say so, yes.

Q. And most of these house buyers who figure so closely as you have said, don't they buy and use commutation tickets? A. Yes, they do.

Q. Then it would be a question of 12 and 15 cents, wouldn't it? A. Yes, but not a question therefore as between one and two.

(Mr. Tingley) Gentlemen, Mr. Emmons said that in the permanent case, the commutation rates would be increased.

(Mr. Howard) But we are not arguing the permanent case now.

Q. (By Mr. Howard) You don't mean when you say, that these house purchasers that your companies have sold houses to, that you figure so closely with them, that you don't give them a cent or two more to pay for extra carfare? You don't take the last cent do you? A. We sell down as low as one hundred dollars sometimes. You wouldn't believe that hardly, would you? Cash payment. Now as far as taking the money from them, we don't take the money at all. We finance them.

Q. It's a finance company then, is it? A. No, we finance them thru the building associations for their first mortgage. We may sell the ground rent and finance them thru the building association for the first mortgage and we have to carry the second mortgage.

Q. Senator, isn't your principal complaint one of discrimination? A. Absolutely and preference given to other communities.

Q. Wouldn't your complaint be met practically as fully by jacking them up to the same level as you, as by letting

you down to the same level as they? A. No, I would say that was robbery.

Q. Now you testified as to the number of building permits and the large number of houses that have been constructed in Halethorpe, during the last four years and the last seven years? A. Yes, not as near as large as it should have been.

Q. I was asking does that show how large it was or how small it was in number? A. No, it shows that we have had quite a little activity since annexation, practically.

Q. And that is all under the handicap of having two fares to pay? A. Absolutely, sir.

Q. Senator, when the Halethorpe road was built, didn't you write the United that if they would only build it there, that you wouldn't ask for a single fare? A. I would like to see that letter. Have you the letter?

Q. It's more than three years old? A. Yes, sir, and we are only asking now that we be put on the basis that we were then. We then paid ten cents to get to Baltimore, and I don't care whether that ten cents is in two fares or one fare.

Q. You don't sell houses for the same price you did then, do you? A. No, of course we don't.

Q. Now, Senator, look at the map to the left of you, your exhibit over there? A. Yes, sir.

Q. That is a map of a blue print of a map of Baltimore City, isn't it? A. Yes, sir.

Q. The red line indicates the city limits, doesn't it? A. Yes.

Q. It is a fact, isn't it, that Halethorpe is down south, or the southwest line there? A. Yes, sir.

Q. It is nearer to the center of the city than any other place that is within the limits, isn't it? A. Yes, sir.

Q. In other words the city limits bite in further by Halethorpe than anywhere else in the circumference of the city? A. Yes, sir.

Q. You would yourself admit, wouldn't you, that distance from the center of the city is not the only factor to be considered in the proper zoning of car lines, that density of population and whether a line pays for itself and things of that sort are necessary proper subjects for consideration? A. No, not entirely. I have seen Overlea, I saw Overlea when it was a truck farming section. I saw the United Railways go out there and I saw Overlea developed into a suburban section rapidly, because Overlea at that time in the county, Halethorpe in the county, both in the county, Overlea was given a preferential rate of half the fare over what Halethorpe had, Overlea not having any natural advantages, not any better ground, not better houses, no more healthy, Overlea has grown to be one of your more densely population routes.

The same thing applies to Hamilton and every place that you went with your railway and gave a one fare that was the section that built up, and sections that were held on a two fare were retarded.

Q. Do you think then the greater growth of suburban developments to the north and east of the city as compared with the south, has not in any way resulted from the relative advantages of the two localities? A. I beg your pardon, I don't live in the south, I live in the southwest.

Q. You don't think the relative advantages of the two localities have anything to do with it? A. There were no advantages that they had except of course Roland Park. Roland Park had the advantage of an excessive amount of money and a beautiful location, and we don't claim to be competing with Roland Park.

(Mr. Howard) That's all.

(Mr. Toole) Do you think that an increased car fare would be a burden on the people in your locality out there?

(The Witness) I say that if this fare is put to 20 cents, to Halethorpe, where it was originally ten cents to Halethorpe, you would be putting on the Halethorpe people twice as much of the burden as you are putting on

any other locality around Baltimore, and that would be excessive and unfair, unreasonable and giving other sections an undue and unreasonable preference over our community.

(Mr. Toole) Your objection isn't only the advantage that one community might have over another, but you object also to the hardship it would put on the people living in your locality?

(The Witness) Of course the two go together.

(Mr. Toole) Yes. What is the average wage out there among the working people, do you know?

(The Witness) I don't know.

(Mr. Toole) Are there a great many working women out there?

(The Witness) Quite a few women come in to work as well as men.

(Mr. Toole) Compelled to work?

(The Witness) Yes.

(Mr. Toole) Do you know anything about the wages they get?

(The Witness) I really do not. I wouldn't like to testify about the average of wages. I don't know.

(Mr. Toole) I had intended to put on some witnesses about that but we will put it off until the next hearing. Isn't it true also that sometimes the wages of the whole family are necessary to finance the buying of a house like when sons and daughters are working?

(The Witness) Frequently in some cases the husband and wife both work.

(Mr. Toole) All necessary?

(The Witness) Yes.

(Mr. Toole) Then in order to buy your houses, not just one man must pay carfare in and out each day, but two, three or four?

(The Witness) I think it would average more than two for each house.

(Mr. Toole) At least three for each house?

(The Witness) I wouldn't be surprised.

(Mr. Toole) Would have to pay that additional car-fare? That's all.

(The Witness) Thank you very much for helping me out.

(Examination concluded.)

(The Chairman) Now we will start with the argument.

(Argument heard.)

NOTE The Commission then adjourned.

SIXTH DAY.

(The Chairman) Now, gentlemen, we will proceed with the case in the order that was followed in the emergency hearing. That is, the railway company will put on its case followed by Mr. Tingley and the other protestants. The Company will be given every opportunity to present its case in any way that it sees fit to present it, and then at the conclusion of the Company's direct testimony the Commission will take a recess in order to let the People's Counsel study the exhibits, etc., and also to permit the Commission to handle a number of other cases that have come up and which have been set down for hearing.

At the conclusion of that recess the People's Counsel and other protestants will put on their case and it may be necessary at the conclusion of that to take another recess for some days if it desires to do so, and then there will be any additional testimony put on by either side, and we will set a date agreeable to everybody for argument.

(Mr. Howard) I would suggest that the testimony introduced in the emergency hearing be considered a part of this case.

SEVENTH DAY.

Thereupon—

C. D. EMMONS,

a witness of lawful age, produced on behalf of the applicant, having first been duly sworn according to law, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Howard:

Q. Mr. Emmons, I believe the Commission already know who you are and your qualifications from your previous testimony in the emergency case. What I first want to do is to take up some proof that was put in then and bring it up to date. Now I will take that up in the same order in which they were filed as exhibits, and I think the first exhibit that was filed on behalf of the Railways Company at the emergency hearing, Exhibit No. 1, was one that was called "Decrease in Passenger Revenue" or "The First Eight Months of 1927 Compared with the First Eight Months of 1926, also a Comparison for the Last Four Months of the Period."

Now since then some additional time has elapsed, and I presume therefore you can bring that exhibit up to date. Have you prepared or had prepared under your supervision such an exhibit? A. I have had such an exhibit prepared, Mr. Howard.

(Mr. Howard) We will ask the stenographer to mark this exhibit No. 1-A.

NOTE: Statement above referred to is here filed in evidence and marked "Applicant's Exhibit No. 1-A."

Q. Now, Mr. Emmons, will you explain briefly to the Commission how that is brought up to date and what it shows? A. Exhibit 1-A is exactly the same as No. 1 in the preliminary hearing down to July. In No. 1 August was made approximate with a decrease of $39,808 passenger revenue or 3.13%. In bringing that down actually the approximation is almost correct, the actual figure being $39,810.00, the percentage remaining the same, 3.13.

The actual for September is a loss in passenger revenue of $42,311.00 or 3.21%.

We have estimated October approximately as a loss in passenger revenue of $45,556.00 or 3.21%, giving a total decrease from the first ten months of $381,198.00 decrease in passenger revenue or 2.84%.

In the lower part of this exhibit we have shown the comparison of the last five months, May, June, July, August and September, which shows a total decrease in passenger revenue of $249,534.00 or 3.73%, the fact being that we are continuing to lose, as a later exhibit will show, day by day in October.

Q. The only estimate in this table is what? A. October is approximate, 3.21. It now looks like it will probably run more than that, but I might say we have used 3.21 in a later exhibit that we will submit as being possibly nearly correct.

Q. When you say it might possibly run a little more you are referring to the days that have elapsed since the period when this exhibit was prepared? A. Yes. We are going down at a greater rate than 3.21 at the present time.

Q. Now Exhibit No. 2 of the Railways Company in the former hearing was a "Comparative Statement of Revenue Passengers." This first statement that you have just filed is one of passenger revenue, isn't it? A. Yes.

Q. There is a little difference between passenger revenue and revenue passengers? A. Yes, there is.

Q. What is that difference? A. The difference is the revenue passengers count all the different classes of passengers.

Q. Per capita? A. Per capita, and the passenger revenue is the amount of revenue received from those different classes.

Q. And all fares are not alike? A. All fares are not alike.

Q. Your previous statement was one for years 1920 to

1926 inclusive with the year 1927 added by months and the month of August approximated. In what respect have you brought them up to date? A. We have put August in as actual, September in as actual, and approximated October.

(Mr. Howard) We will ask the stenographer to mark that Applicant's Exhibit 2A.

NOTE: Statement above referred to is here filed in evidence and marked Applicant's Exhibit No. 2A.

Q. So in other words this is brought up to date in the same manner that Exhibit No. 1 was? A. Yes, sir.

Q. Will you explain briefly to the Commission any points in connection with this Exhibit No. 2A which you may think will help their understanding of it? A. The top part of Exhibit No. 2A is identical with the top part of Exhibit No. 2, being years 1920 to 1926 inclusive.

The lower part of Exhibit No. 2 ended with July and had August approximate as a loss in revenue passengers of 499,951 or 2.89%. Apparently that was accurate, because in the new statement August shows that identical loss of 499,951 or 2.89%.

September shows an actual loss of 488,732 revenue passengers or 2.72%, with a net decrease of revenue passengers for the first nine months of the year of 4,102,501 or 2.46%.

October then is approximated with a loss of 564,971 revenue passengers or 2.91%, giving a net decrease in revenue passengers for the first ten months of the year 4,667,472 or 2.51%.

Q. I believe you have already explained it, but why are the percentages in this table a little lower than the percentages in the table of passenger revenue, or what does that indicate? A. The percentages only would be the same if all of the various classes of fare decreased the same amount. If there is a greater decrease in the higher class of fare which we find to be true, then the percentage of revenue passengers would be less than the percentage loss of passenger revenue.

Q. In other words, this indicates a greater falling off in full fare passengers than in computation or school passengers? A. It does, yes.

Q. Now old Exhibit No. 3 was a statement or estimate of the preliminary results of August, 1927, compared with the results of August, 1926, on a day to day basis giving the weather conditions too of each day? A. Yes.

Q. I presume you are able to supplement that, are you not, and bring it up to date? A. Not the month of August, because that was completed. We have, however, made a similar statement of the month of September and also one for the month of October as far as we could bring it up.

Q. Are they on two sheets? A. They will be on two sheets, yes.

(Mr. Howard) We will ask the stenographer to fasten those together and call them Exhibit No. 3A.

NOTE: Statement above referred to is here filed in evidence and marked Applicant's Exhibit No. 3A.

Q. Now, Mr. Emmons, these two sheets are tables constructed on the same basis as Exhibit No. 3 at the preliminary hearing was, that is to say they are the day by day passenger receipts, the first one for the month of September and the second sheet for so much of the month of October as you were able to include, that is, up to the 25th? A. That is correct.

Q. Taking the September one first, is there anything in it that you want to especially explain or call the attention of the Commission to? A. Excepting the fact that it shows a continuing loss and to my mind shows the need of quick relief that we were asking for before which we unfortunately did not get, and shows the need of relief certainly at the present time. The day by day comparison for the month of September shows a loss in passenger revenue of $42,585.00 or 3.23%. The question may be asked why that isn't 3.21. This 3.23 includes chartered cars, which make a slight difference. But of the 30 days in September there were only three that showed an increase at all. One of them was a Sunday

with a rainy day last year, one was a Labor Day comparison, and another was a Hebrew holiday last year as against no holiday this year.

Q. It was suggested I believe in connection with the emergency hearing that last summer was a very unfavorable period as a basis for comparison owing to various conditions. Are there any features as to these tables that bear on that point, for instance, the B. & O. Fair of the Iron Horse, I believe it was called? A. Yes, they should have helped our earnings this year, and while we did haul a lot of people it wasn't able to offset the loss we were getting.

Q. Why did it help your earnings if it did? A. Because we hauled quite a number of people to Camden Station, taking the train down. We hauled quite a number out on the Halethorpe line and went out on buses at the end of that line.

Q. In other words there were two ways you might say—— A. There were really three ways. Some people went out the Washington Boulevard to Morrell Park.

Q. Did you run buses from there? A. There were buses running from there.

Q. And from the Halethorpe line buses were run? A. Yes, sir.

Q. But in addition to that did you take people to Camden Station going to that Fair? A. Yes, sir.

Q. Did many people go to that Fair? A. Over a million and a half people.

Q. So that is a feature that you didn't have last year, isn't it? A. We did not.

Q. You have noted at the foot of these exhibits the special holidays and features that have anything to do with the amount of business? A. Yes.

Q. Any other special things you would like to call the Commission's attention to now on that? A. I think that's all.

(The Chairman) I notice, Mr. Emmons, that on no

day as far as I have been able to see, during the Fair of the Iron Horse did the passenger receipts equal the passenger receipts for the corresponding day of last year except on two occasions. On Monday the 10th of October there $49,673.00 as against $49,556.00 for the corresponding day of the previous year, and on October 11th $46,885.00 as against——

(The Witness) That's a loss. There was only one day really.

(The Chairman) Yes. Then only one day during the Fair of the Iron Horse did the receipts of the company equal the receipts of the corresponding day of the previous year?

(The Witness) That is true.

(The Chairman) In spite of the fact that they had this big Fair out there, fewer people rode?

(The Witness) Yes.

Q. And do you know whether a large proportion of the people who went by way of Camden Station did you use your lines? A. We ran I think something like 560 extra cars to take care of the people, so I take it from that that they did.

Q. You remarked a moment ago that what the Chairman was referring to was the second of these exhibits. Had you made your comment on the second as well as the first? A. No I had not yet.

Q. Have you anything to say in reference to the sheet showing the October results? A. I have this to say: that out of 25 days during the month of October we show only three days with an increase, one of them referred to by the Chairman being the 9th of October wherein the Fair of the Iron Horse did probably pull us out of the red, the next being the 16th where we had a very good clear Sunday as against a rainy Sunday last year, and the next the 23rd, again a partly cloudy Sunday as against rain last year, the weather conditions on Sunday having a marked effect on the riding.

The result for the 25 days, three of which are increases,

22 of which are decreased, being a decrease in passenger revenue of $39,262.00 by a day by day comparison of 3.42%, and taking the 25 days by dates, which will be the actual comparison, with the month in the end, the decrease is $38,205.00 or 3.33%.

That's the reason I said a while ago we used 3.21 which is actually lower than we are running at the present time.

Q. And taking the month of October as a whole would you say it was good riding weather or bad riding weather for cars? A. It has been really a fine month as a whole I think. I think that everyone remarked that during the Fair of the Iron Horse we had remarkable weather.

(The Chairman) What is the explanation of Sunday, September 4th, as compared with Sunday, September 5th of 1926? The Sunday was rainy I assume and yet you show an increase of $2,476.00?

(The Witness) That was rain last year, Mr. Chairman.

(Mr. Tingley) In the afternoon?

(The Witness) Rain last year in the afternoon.

(The Chairman) Oh, I read that as rain this year.

Q. Then passing then from these exhibits, your former Exhibit No. 4 you have not brought up to date, have you? That was cash receipts for months of July and August? A. No, that was complete in itself.

Q. Now your former Exhibit No. 5 was a chart showing the comparison of your monthly net income for 1927 with the average monthly net income for seven years and showing the highest and lowest for each month? A. Yes.

Q. Have you anything to bring that up to date or not? A. No we did not. It was not an exhibit we introduced and we did not bring it up. We introduced it, but it was following an exhibit introduced by the other side.

Q. Exhibit No. 6 was also something for the years 1920 to 1926 and didn't need any bringing up? A. That was complete in itself.

Q. Exhibit No. 7 was your estimate of income for the year 1927, which consisted of two parts, in fact of a sheet called "A," your estimate for income for 1927, and a sheet called "B," being your estimate of revenue passengers and passenger returns for 1927. Now as some time has elapsed since then I presume you have a little more light on that subject, haven't you? A. We have made a new estimate, yes, which we present.

Q. In your new exhibit I believe the first nine months are actual and the last three months estimated? A. Yes.

(Mr. Howard) We will ask the stenographer to mark this Exhibit No. 7C.

NOTE: Statement above referred to is here filed in evidence and marked Applicant's Exhibit No. 7C.

Q. Now this exhibit is not a re-statement of the whole of the previous exhibits, but I believe it starts with them and brings up to date by adjustments, doesn't it? A. No, it starts with the first nine months actual. In the previous exhibit we had only the first seven months actual. Then we have set into the first nine months its proportion of the added expenses for accidents and for power.

Q. Are those the same two items that you testified as to at the previous hearing? A. They are, but I might say here that while we used $120,000.00 for power and are still using it here, later figures look like that one hundred and twenty might reach one hundred and fifty. It's still in controversy, but in order to avoid criticism made before as to the first seven months being $383,000.00, and the total year being $489,000.00 and only expecting about $100,000.00 the last five months, that being caused by the fact that we were taking the entire amount of the accident and power adjustments out of the last five months, we have in this new statement taken the proportionate part of the adjustment out of the first nine months.

Q. You had distributed it over the twelve months? A. Yes.

Q. Instead of putting it in the last few months? A. Yes. The result being that the revised figure for the first

nine months with adjustment for power and for accident, and also the adjustment for the increase in taxes of $75,000.00, shows that $443,391.00 becomes $207,141.00 as the net income for the first nine months.

Q. That's under the column with "A" over it, isn't it? A. That's under the column with "A" over it, yes, sir. Now the last three months are estimated on the basis of the actual of the last three months of 1926 less that 3.21 that I spoke about, when we were talking about the earning loss, and as I said we are actually running more than the 3.21 at the present time.

Q. More off from that you mean? A. Yes, we are having a greater loss, but the passenger revenue being figured on that basis with the other revenue taken the same as last year.

Then the expenses are figured on a basis of 1% decrease. That again perhaps is more than we can find, because our month of September shows, reports gotten out since this was figured up, that while we lost $40,000.00 in gross, our loss in net was forty, so we really saved nothing in our operation, but nevertheless if we do save 1% in our operation, it will bring the operating expenses, plus adjustments to $2,572,222.00, the only other change from the last six months of last year being the item of taxes which carries this adjustment for the last three months, the item of park tax, which is figured at 6.7% of passenger revenue, and I am sure the Commissions understands it, I think Mr. Sobeloff now understands it, that is passenger revenue over the entire system outside of Baltimore City as well as on private right of way in Baltimore City.

(Mr. Sobeloff) I understand that.

(The Witness) It doesn't mean we are putting the difference in our pockets.

Q. Anyone who understands the situation and decisions of the Court of Appeals ever supposed that the Park Tax was on your entire revenue, did they? A. They did not.

(Mr. Sobeloff) The only point I want to make is, that

while we talk about the 9% tax, it isn't as burdensome as that figure might indicate.

(Mr. Tingley) I think we are all together in that we don't want to increase the Park Tax.

(The Witness) That certainly is a great burden on this company, and it would mean that this company out of a ten cent fare would only get about 9.3 cents for itself. That to my mind is rather a burden the street car rider should not bear, I think we all agree with that, though we have borne it for long years. The same with the paving tax. I think that is a burden the street car riders should not bear.

Q. The Commission can't relieve you of those? A. I know they can't, but I am just simply getting something off my chest.

Q. At any rate the figures you have assumed here for Park Tax is the ratio that experience has shown and is in conformity with the decisions of the Court of Appeals as to the basis of apportionment and other factors that control, isn't it? A. That is right. Then the income tax becomes a credit there, because we have been setting up an income tax on the assumption that we were going to have to pay, have some earnings this year, not realizing the way we would be falling off.

Q. You don't mean that your income will fall so low that Uncle Sam will give you a bonus, do you? A. No, I mean that we have set up more than zero, that is, we have set up an amount that we will not have to pay. We will have to pay a little, but not to the extent that we were setting up for it. There is a credit in the last three months to bring that back.

Q. One case of a reserve that's fully adequate? A. At the present time. It's unfortunate that it is. The result being for the last three months we estimate a net return, with those adjustments, $217,247.00 for a total for the year of $424,388.00 as against our original estimate of $489,000.00 showing we are going worse than we had anticipated.

Q. And how much nearer the end of the period are you

now when this estimate was made than when the former estimate was made? A. The former estimate was made with five months estimated and this has three months estimated which is two months nearer the end.

Q. And that figure below is your net income after paying fixed charges? A. Yes, $425,388.00.

Q. Now down below you have a note added on operating expenses. Does that require any explanation? A. No, I did rather explain it as we went through. That's an adjustment of the power and accident reserved for the first nine months to the last three months and the total adjustment for the year.

Q. And you have a second note below giving your percentages of increase and decrease of operating expenses? A. Yes. This shows an average of .58 and we use 1 as a decrease, but as I say in the month of September we did get a 14% decrease in operating expenses.

(Commissioner Harper) Did you explain the $180,000 in the second column opposite operating expenses?

(The Witness) Yes, that was the nine months adjustment of $240,000.00 made up of $120,000.00 additional power cost which I just stated might be one hundred and fifty, but we are still holding to one hundred and twenty, thinking that perhaps we can hold it at that in the end, also the accident reserve.

(Mr. Tingley) It's .42% increase and not decrease, in September operating expenses.

(The Witness) That is right. I am glad you corrected me. I said .14% decrease, but it's shown .42. That is we did make this estimate on the assumption that while the business would fall off in dollars at the rate of 3.21% we might possibly hold our expenses down by a figure of 1%. Now it looks like business is falling off at a rate greater than 3.21% and we are not able to hold our expenses down to 1% below of last year, so this figure of $424,000.00 will probably be high in the end rather than low.

(Commissioner Harper) In view of the fewer car

miles operated, it occurred to me that 1% would be rather conservative.

(The Witness) As against last year we are not operating so much fewer car miles. These statements made about our car miles and about the increase of passengers, of the first eighteen days of October as against September are not correct statements at all, because the first of September our car miles are high because our parks are operating. All the parks are operating at high speed, and we——

(Commissioner Harper) You mean the City Parks.

(The Witness) No, our own parks, Bay Shore and Gwynn Oak and River View, and the first days of September the schools are not open. The private and parochial schools, a good many of them, are not opened until the latter part of September. Then when we come to October and then you get this big increase in passengers, the Fair of the Iron Horse is on and all the schools are open as against not being open in September.

(Mr. Tingley) You operated fewer car miles in October, didn't you?

(The Witness) We made our fall changes in schedules according to the business.

(Mr. Tingley) Doesn't the Fair of the Iron Horse and the schools operate the other way?

(The Witness) No, the parks work against that, and going out the Bay Shore Park we run about four times the miles in an hour than we do up there in the city, so when you got a high speed line operating your car miles will run up very quickly. When that is off, as against a slow speed line, you can see that quite a difference is there, and they are really not comparable.

(The Chairman) Have you actually decreased your operating expenses over last year, Mr. Emmons?

(The Witness) In September we were a little bit more than the operating expenses last year, I mean as a whole. For the first nine months of the year our passenger revenue decreased two and three-quarter per cent., our

operating expenses decreased .82%. We had a slight decrease in the operating expenses last year, but nothing like the decrease in passenger revenue. In dollars it was $335,000.00 decrease in revenue, decrease in operating expenses, $60,000.00.

Q. Mr. Emmons, turning aside for a moment from the exhibit, perhaps this would be a good point to ask you to explain a matter in relation to which you have just been asked about. There has been some suggestion made that you cut service since the Emergency Rate Case was instituted. Have you anything to say on that subject? A. We have endeavored to keep our service standards in accordance with the Commission's standards and have only revised our schedules as we would do under any circumstances. We have not particularly made cuts of service. In fact we have endeavored, along with Mr. Tingley, to get people to ride. We thought he was helpful to us to get people to ride, so we have put invitations on the cars which do not seem to have been extremely helpful.

(Mr. Clark) No, because they didn't state the facts. We can't read on the street cars half as good as we can in an automobile.

(The Witness) Mr. Toole said he could.

(Mr. Clark) We have trouble hanging on the straps.

(Mr. Toole) I come down with bankers when I ride, but I only ride once a week.

(The Witness) Our records show we have to date this year made 56 changes in week-day schedules, we have made 49 changes in Saturday schedules and 31 changes in Sunday schedules. Last year, 1926, we made 67 changes in week-day schedules, that's for the whole year as against nine months, we made 62 changes in Saturday schedules, we made 32 changes in Sunday schedules, and I asked this morning as to the number of complaints that had been received with regards to our service. I find a total of ten since the Emergency Hearing, two through the Commission, one through the Sun newspaper and seven direct to us.

I have analyzed all the changes in the schedules and they are apparently carefully worked out. We have our traffic man here, Mr. Locke, and I have in mind, that if that question wants to be gone into any deeper I will have Mr. Locke take the stand and he could explain the whole system of schedule making, the whole system of endeavoring to meet the problem of traffic as presented. There are times when you have a schedule that is apparently taking care of business, and for some cause or other a block down town, a fire, or other things, cars get bunched, and the first cars are terribly overcrowded. Its a most difficult matter to handle, and we have been trying definitely to keep at least to Commission service standards, which we feel are fine from our study of other cities and our records of other cities. They are more severe in Baltimore than any town we know of. 50% overloading seating capacity is not required to our knowledge any place else. Many places they have 100%, in many places they have no limit at all. We have been endeavoring, however, to conform to the 50%, but that has thrown us entirely out of the possibility of seven passengers per car mile which the Commission figured years back, so that now we are not far above six and a quarter passengers to car mile.

Q. Now, Mr. Emmons, one word more in reference to this Exhibit No. 7C then. If I understand this figure of $424,388.00, at the lower right hand corner represents your best estimate of what your net income for the year will be, subject to the exception that you had said the $180,000.00 is going to prove inadequate and that those two items that make up the $180,000.00 are going to prove inadequate in that you will have to pay the power company more than the amount stated, and the accident reserve will need at least that much revision? A. Yes, it looks like that at the present time. In fact the late figures indicate that that $120,000.00 will have to be increased to $150,000.00.

Q. And your $120,000.00 is minimum? A. One hundred and twenty is the minimum, yes, sir.

Q. And as to the accident reserve feature, how about that? A. That we still feel $120,000.00 is absolutely nec-

essary to build us up to a position not where we ought to be, but toward where we ought to be.

Q. Anything happened since the previous hearing to make you think otherwise? A. Excepting I have had a very careful analysis made of the accident situation. Mr. Page, our claim agent, is here and I thought if that needed to be gone into very deeply that I could have him take the stand. I might give just in brief a further anaylsis in addition to the testimony that I gave before to this effect, that while in 1920 we set up 4½% our expenses were 4½%; in 1921 we set up 4%, our expenses were 4.12%; in 1922 we set up 4%, these all being of our gross earnings, and expenses were 3.71%; 1923 we set up 3½%, expenses 3.29%; then we dropped to our present rate of 3¼%, the expenses 3.22%, that was 1924; 1925 3¼% set up, the expenses 3.45; in 1926 3¼% set up, the expenses 3.4%; 1927 3¼% set up and expenses to date 3.82% of our gross earnings.

Q. That's for the months that have elapsed merely? A. Yes.

Q. What date is that brought up to? A. This is the first eight months. In the first seven months, as testified before, our deficit at that time was $10,000.00 a month or $70,000.000. There were 415 claims on the docket as of August 31st as compared with 328 on August 31st, 1926, an increase of 87 suits, and this means we will have a larger number of suits reached during September and January terms with a consequent increase in expenditures for this purpose.

For the year 1926 there were 346 suits filed, an average of 29 per month. For the first eight months, in view of the increased number of suits on the docket, and a general increase in claim costs, it is fair to assume there will be at least a corresponding increase in the suits in the last four months of the year. Our expenditures for the last four months of 1926 amounted to $214,000.00.

(The Chairman) That's for claims?

(The Witness) That's for claims, yes, and in analyzing the January 1 to August 31, 1927, against the 1926, we find 17% increase in cost of claims, so applying that it

would make for the last four months of 1927, $250,000.00, making a total increase in claim department expenditures alone for the year about $96,000.00, but that doesn't give us any leeway to make any accumulations so we have used the $120,000.00.

Q. And I believe at the last hearing you went very fully into that item of taxes? A. Yes, I did.

Q. Has anything happened since then to indicate that you might get relief from them in any way? A. Not a thing. The only relief that can be gotten is for the company to get in a credit position to take advantage of the preferred stock law and I don't see that we are getting that credit position very quickly.

Q. Nothing further that you have to explain about this exhibit? A. No.

Q. Now Exhibit No. 8 at the previous hearing was a statement of your annual shortages in net income from 1924 to 1927 with the last five months of 1927 estimated, those calculations being made with reference to the basis or assumption of $1,182,142.00 which was the estimate of the Commission in the 1924 Rate Case? A. That is right.

Q. Have you brought that up to date? A. We have revised it to agree with the Exhibit No. 7C concerning which we have just been talking about, to the effect that the figure for 1927 which was shown on Exhibit No. 8 in the last case with a net income of $447,849.00 now shows $424,388.00 or less than $1,182,142.00 or $757,754.00 on Exhibit 8A instead of $734,248.00 as shown on Exhibit 8, making the total less than $1,182,142.00 since 1924 $1,345,548.00 instead of $1,322,042.00.

NOTE: Statement above referred to is here filed in evidence and marked Applicant's Exhibit No. 8A.

Q. That's very short and doesn't call for much explanation, does it? A. I think not.

Q. None other than you have already given. You have brought it in conformity with Exhibit No. 7C, is that right? A. Yes, that's right.

Q. And it shows a falling below the Commission's estimate of a little less than $1,200,000.00, it shows a falling below that of $757,000 and odd dollars for 1927? A. Yes.

Q. Now the old exhibits from No. 9 to No. 21 inclusive were not ones that included the last few months or an estimate of this year, were they? A. No.

Q. At any rate they don't require to be brought up to date? A. No. I don't know Mr. Howard, but what it might be well to stop for a moment on this long and short haul rider that Mr. Clark talks about.

Q. Is that in connection with any exhibit? A. Yes, that's Exhibit No. 12 the last time. It seems to me that it ought to be very clearly apparent that there is no relationship of the chart showing an increase in long riders and a decrease in short riders, a relationship to the fare at all, because the short haul district was a more or less completed district in the early years with the long haul district farming communities. With the long haul district growing and the short haul district staying stationary, the point comes this way. I think its very easily explained if you would take for instance 400,000 which was about the population in the short haul district and we will say in 1900 approximately 100,000 in the long haul district. Now in 1925, 25 years after that, 400,000 in the short haul district still exist, but the long haul district has increased to 400,000 itself, it has increased 300%, with the short haul district remaining stationary.

Now if there is a general 10% decrease in loss of riders that would affect both districts, the long and short haul, so the effect would be that 400,000 in the long haul district would reduce to 360,000 and the same would be true of the short haul district, the 400,000 would reduce to 360,000, which would show a loss in the short district of 10%, but a large increase over that period in the long district of 260%, so that I think the Commission must thoroughly understand it, but so much talk has been made about the short haul people falling off as against the long haul people increasing that I felt I had better stop there a moment and try to get that absolutely straight.

(Mr. Clark) You are speaking now of just one factor. There are other factors that belong to the acquisition that you are not mentioning.

(The Witness) That is the main factor, the increase in the population of the long district and the stability of the population in the short haul district.

Q. Now, Mr. Emmons, the former case had to do with the an emergency rate prior to such rate as might be allowed at the final rate hearing, therefore we were not especially concerned with the results for next year, because presumably by that time we would have had our final hearing, but the present being the final rate hearing the question of 1928 becomes at least equally important with 1927? A. Yes.

Q. Have you made any estimate or table of what your expected income for the year 1928 will be if the present rates of fare were continued? A. We have, yes.

NOTE: Statement above referred to is here filed in evidence and marked Applicant's Exhibit No. 22.

Q. Now before you explain the details in the columns, let me ask you to explain this. You have prepared this estimate according to a continuation of the revenue at the same rates, according to a 1% decrease, 2%, 3%, 4% and 5%, haven't you? A. We have, yes, sir.

Q. 5% by the way is the rate of decrease that was assumed by the People's Counsel in the exhibits that they prepared at the last hearing? A. On a 10% rate basis.

Q. This, however, is a table of your estimate if your present rates continue so that element does not enter into it? A. That is right.

Q. On the other hand the question as to whether your shrinkage is progressive, of whether you have now reached the statutory point enters into this, doesn't it? A. It does, yes.

Q. And these assumptions of percentage decrease, the columns other than the second one, they are each based on the assumption that there will be a somewhat continuous shrinkage, aren't they? A. Yes.

Q. Now will you explain to the Commission how this table is made up and what it shows? A. The first column is a duplication of Exhibit No. 7C with the result of a net income of $424,388.00. I don't think it will be necessary to go into that further.

Q. That is comparable with what exhibit showing the same amount? A. Exhibit No. 7C. $424,388.00 is the net income. Now in the second column we have figured what would be the result if we maintained our present revenue, no further losses in revenue.

Q. Meaning by present revenue your revenue for 1927? A. Yes, if 1928 revenue would reach 1927 revenue. The only change otherwise we have made is in the question of operating expenses wherein we have added $130,000.00 for a wage increase which has already been contracted with the men, and $25,000.00 additional for power costs. That is an amount that our figures from the gas company show will probably be collected from us in the next year in addition to that collected this year. That still ignores the $30,000.00 difference between one hundred and one hundred and fifty which we feel there is some question about. That makes the result, the other figures being the same, the subtractions of course making the difference of a net income of $281,000.00 if we maintain the present revenue.

With a 1% decrease in revenue the net becomes $139,700.00; with a 2% decrease in revenue we get a loss instead of any net, we get a loss of $1,300.00; with a 3% decrease in revenue the loss becomes $142,800.00; with a 4% decrease in revenue the loss becomes $284,300.00; with a 5% decrease in revenue the loss becomes $425,300.00.

Q. Now all of those columns are figured on the basis of depreciation figured at the old rate of 5% on your gross, aren't they? A. They are, yes.

Q. Which you have already said is inadequate? A. I have, yes, sir.

Q. We will have more to say about it presently? A. Yes, sir.

Q. As your gross income shrinks is there any reason why your provision for depreciation should shrink at the same time? A. Under the 5% of revenue it does shrink.

Q. But does that correspond with facts? A. Not closely. If a 5% decrease would make a similar decrease serve over certain tracks, there would be some relation to that, but the question of obsolescence, the question of routing, the question of wear and tear, the question of paving, of other vehicles, isn't influenced, so that that to a slight extent would the decrease mean anything.

(The Chairman) Mr. Emmons, these figures are based, entirely are they not, on the estimated percentage of falling off in passengers.

(The Witness) Of passenger revenue, yes, sir.

(The Chairman) These figures in the red down here, they are not brought about by any increase in expenditures, are they?

(The Witness) No, nor by any decrease in expenditures. We have held that we should maintain what we are doing and we have kept our expenditures the same.

(Mr. Howard) You mean as compared with the first column?

(The Chairman) Yes.

(The Witness) Of course, there is the labor increase of the men, beginning on January first.

(The Chairman) And the power?

(The Witness) And the power.

(Commissioner Harper) Of course the decrease in revenue means, as you have just said, a decrease in the number of passengers carried.

(The Witness) Yes.

(Commissioner Harper) Why do you carry your operating expenses through all this decrease at the same amount?

(The Witness) Because we feel that we should main-

tain the service that we are giving and should give somewhat better service if we can.

(Mr. Clark) The same car miles?

(The Witness) Yes. You have been criticising service, Mr. Clark.

(Mr. Clark) Why is it then you are reducing car miles to meet two and a fraction per cent. in traffic?

(The Witness) We always have seasonal changes in car miles, and when we change them we always try to meet traffic conditions, but our result for September, our change in car miles did not, over September last year, help us in the question of operating expenses.

(Mr. Clark) You are saying now with a 5% decrease in revenue passengers, which would be passenger revenue, you would make no decrease in car miles.

(The Witness) I am figuring on maintaining the service that we maintained this year, and I am trying to overcome your point of objection to cutting service.

(Mr. Clark) Would you be justified you think in holding to the same car miles that are being run now if there was a 5% decrease in traffic?

(The Witness) It's a question of how it comes. If our service would show that we could make cuts and still give proper service we probably would, but I am holding at this time and in this figure that we would give the same service that we were giving in 1927 to overcome what you and some of the other people have been objecting to.

(Mr. Clark) I think you are right.

(The Witness) Yes.

(Mr. Clark) But I think you are wrong in——

(The Witness) We can't be right and wrong at the same time.

(The Chairman) Don't let us get into an argument.

Q. Mr. Emmons, is there anything further that you

want to explain about this Exhibit No. 22? A. I think not.

Q. The note at the foot gives the change in operating expenses, does it not? A. It does, yes, sir.

NOTE: The Commission then adjourned for the purpose of taking a short recess.

AFTER SHORT RECESS.

Q. Mr. Emmons, I want to revert again to the matter of bringing up to date or readjusting exhibits that were filed at the former hearing. When I passed over Exhibit No. 6 it was said that we had nothing bringing that up to date. I believe you have an exhibit which we will call Exhibit No. 6C which makes some light adjustment in that and which involves a thing which will be subject to another exhibit, that is, the bringing of your rate case up to date for successive years for things that have gone in and gone out, but have you this revised statement that I have called Exhibit No. 6C? A. Yes, I have.

NOTE: Statement above referred to is here filed in evidence and marked Exhibit No. 6C.

Q. I call it No. 6C because the original exhibit constituted two sheets numbered A and B.

Now the last column of that exhibit involves your rate base or valuation, don't they? A. The one column crosswise involves it.

Q. I am not asking you now to explain how your valuation is brought up to date or carried back in this table, because that would be subject matter of the next exhibit which you are going to file, but would you explain to the Commission with reference to old Exhibit No. 6 shows what this Exhibit 6C shows and wherein it differs and why it differs in any respects from the other one? A. Well, it's worked out practically on the same lines with some slight adjustments made in the different accounts.

Q. What was the general purpose of the whole exhibit? A. The general purpose of the whole exhibit was to show the rate of return from the years 1920 to 1926 inclusive on the basis of $77,000,000.00 valuation.

Q. I believe old Exhibit No. 6 has it on the basis with easements and without easements? A. Yes.

Q. This is on the basis of including easements though, isn't it? A. Yes, it is.

Q. Now, expain briefly to the Commission this table? A. The return received in 1920 was $4,246,845.10, or on the basis of $78,118,202 it was 5.436%. Now, perhaps I better explain $78,000,000. That is taken by the seventy-seven million as of January 1, 1924, and adjusted by book additions and book retirements from 1920 to 1923, inclusive, and then the mid-year point is taken which gives the figure $78,118,202.00.

Q. By taking the mid-year point, you mean you take the valuation as of the beginning of the year and as of the end of the year and average it? A. Yes.

Q. For instance, if the valuation for one year would have been $77,000.00 on January first and $79,000.00 on December first, you take $78,000.00 as the average for the year? A. Yes, that is right.

(Commissioner Harper) In these figures did you put easements in at seven million in all the years?

(The Witness) Yes, we have included the $77,000,000.-00 as the base as of January 1, 1924. Then in 1921, with that explanation, the return received is $3,762,163.00 on a rate base of $77,436,209.00 or 4.858%.

In 1922 the return received is $3,948,217.00 on a rate base of $76,067,420.00 or 5.19%.

In 1923 the return received is $4,083,627.00 on a rate base of $76,674,154.00 or 5.326%.

Now when we get in the years following January 1, 1924, instead of taking the book additions and book retirements we have taken the book additions and valuation requirements to bring that up to date, so that in 1924, with a return received of $4,124,580.00 with a rate base of $77,416,257.00 we have a rate of return received of 5.328%.

In 1925 with a return received of $4,279,060.00 on a rate base of $77,989,562.00 we have a rate of return of 5.487%.

In 1926 with a return received of $4,314,015.00 on a rate base of $78,075,940.00 we have a rate of return of 5.525%.

The rate of return read is the very last column and has been adjusted through the return received according to the supplementary exhibit No. 6 and has been adjusted by additions and subtractions which I believe Mr. Nodder has gone over. I am not sure that it has been entirely proved, but it has been presented to him. Have you taken those Mr. Nodder.

(Mr. Nodder) I have gone over them Mr. Emmons, but I have not finally decided they are correct. They are approximately correct.

(The Witness) Very little change at any rate.

Q. Now Mr. Emmons, directing your attention once again to the last three columns, 1924, 25 and 26, and the heading at the top of them, you remarked that was calculated by adjusting this $77,000,000 valuation to subsequent years by taking book additions and deducting valuation retirements? A. Yes.

Q. Suppose you had taken book additions and deducted retirements at cost or book retirements as was done in the former exhibit which method tends to increase the rate base and which method tends to lower it? A. This method tends to lower the rate base.

Q. So if I understand it right you have taken off everything that went out at its full valuation? A. That's right.

Q. Without any deduction whatever? A. That's right.

Q. In bringing your valuation up to date? A. Yes.

Q. The figure for 1926, the figure used as the rate base for 1926 in your former exhibit No. 6 was $79,545,400, and odd dollars. What is the corresponding figure that you have found here? A. $78,075,940.00, nearly a million and a half less.

Q. So you have docked your valuation about a million and a half dollars by that method that you have adopted by bringing it up to date? A. That's correct.

Q. Now the lower quarter or lower third of this exhibit No. 6C is entitled "Reconciliation of Return Received as Shown on Exhibit No. 6 with the present one." That gives the items wherein there is any difference between the two, doesn't it? A. Yes, that's the figures I was just speaking about and asked Mr. Nodder to check. He said he had gotten them but not checked them, but they look approximately correct.

Q. The figures had all been submitted to Mr. Nodder? A. Yes.

Q. And so far he finds it approximately correct? A. Yes.

Q. Nothing further you have to say on that exhibit? A. No.

Q. Who have you had especially working on this calculation by bringing your rate base up from January, 1924, the date as of which the Commission found your valuation, of bringing that valuation up to these subsequent years.

Q. Our Valuation Engineer, Mr. Bancroft Hill and our Assistant Auditor, Mr. Grafton.

Q. Have you a brief statement of the results arrived by Mr. Hill in his work? A. Yes, sir.

Q. What is it entitled? A. It is entitled, "Additions to and Retirements from the Valuation of January 1, 1924."

NOTE: Statement above referred to is her filed in evidence and marked Applicant's Exhibit No. 23.

Q. Now you have just stated that the method followed in this is to add the additions at their book value which is cost, isn't it? A. Yes.

Q. And to charge off from your valuation everything that went out at the full valuation basis? A. Yes.

Q. Of course that would be more than cost in most cases, wouldn't it? A. Original costs, yes.

Q. And of course your valuation suffers accordingly as you charge things off at more than cost? A. Well, the

valuation base I don't know particularly suffered. Its keeping it on the reproduction basis on which the valuation was made.

Q. But as compared with the book costs? A. The book costs, yes.

Q. Now, will you take this statement that has just been filed and explain to the Commission what it means? A. This statement shows a summary of the retirements in the years 1924, 25 and 26 under the various account numbers giving in detail the dollar cost of the retirements with the result that we find in 1924 there was $802,771.00 of property retired; in 1925 there was $1,085,565.00 worth of property retired, and in 1926 there was $969,950.00 worth of property retired, or a total of $2,858,286.00 worth of property retired in the three years.

(Mr. Clark) What figure do you use in presenting the retirements?

(The Witness) The valuation figures .

Q. So that much of valuation figures have come off the property of the company during that period? A. Yes.

(The Chairman) That is the valuation allowed by the Commission for these various items?

(The Witness) Yes, not our claim or not the People's Counsel claim, but the valuation allowed by the Commission.

The next column shows the value added during those years as taken from our books but not showing the details.

Q. By the way, in that next horizontal column has the correction been made in the second figure of $1,399,663.00, that ought to be instead of seventy-three? A. That's a typographical error.

Q. Its only ten dollars difference? A. Yes. The value added then in 1924 was $1,635,284.00; in 1925 was $1,339,663 and in 1926 $828,609.00 or a total value added in the three years 1924, '25 and '26 of $3,863,556.00. So the increase in valuation is the difference between the amount of value added of $3,863,556 and the amount of

retirement of $2,858,286, or $1,005,270.00 increase in valuation.

Q. Now, in the former statement that was filed at the former hearing where this was handled on a book basis the total increase was shown to be nearly two and a half million, was it not? A. Yes, it was a little over two and a half million.

Q. And the difference I understand is due to the method which you have now adopted of charging off everything that has gone out at its valuation, instead of at cost? A. That's right, and putting things on at their actual cost.

Q. There is a note at the foot of this exhibit which says, that's all values are without general overhead, that's right isn't it? A. That's right, yes.

Q. And the second line says retirements are at Public Service Commission values? A. Right.

Q. That means what you have just explained; that all items that have gone out you have charged at the valuation? A. That's right, yes.

Q. And all additions are at cost? A. At cost.

Q. Have you charged those retirements off at their depreciated valuation or at their undepreciated larger valuation? A. At their undepreciated larger valuation.

Q. All of that explains why your present exhibit brings your rate base for 1926 about a million and a half dollars lower than your former one did doesn't it? A. Yes, sir.

Q. Suppose you would explain this too, Mr. Emmons. The amount of these retirements are shown by this statement greater than those that are charged against your depreciation account during those three years? A. They will be because they are at valuation cost and the retirements against depreciation account are estimated original cost.

Q. So it is very much larger? A. Yes.

Q. Nothing further Mr. Emmons that you have at present to say about that statement? A. No, I think not.

Q. Now, Mr. Emmons you have already filed a statement showing what your net income would be if the present rate of fare continues for next year? A. Yes.

Q. The next thing is have you a statement showing what rate of net income would be of you got the increase to a ten cent fare that has been asked for? A. We have made an estimate to that extent, yes.

NOTE: Statement above referred to is here filed in evidence and marked Applicant's Exhibit No. 24.

Q. Now, the first thing Mr. Emmons I think to make clear is on just what fare is this estimate figured at? A. On a ten cent fare.

Q. On a ten cent adult fare? A. With a five cent school ticket, a five cent half fare instead of the present four cents and all county commutations raised on the same basis of the adult fare from seven and a half to ten cents or 33⅓%.That is figured on the first county commutation rate being changed from 4½ cents to six cents, second and third county zones being changed from five cents to seven cents and the Bethlehem Steel tickets being changed from five cents to seven cents.

Q. So the only thing unchanged in there would be the school ticket? A. That's right.

Q. Which remain at five cent. The adult ticket is raised to ten cents with no reduction? A. No.

Q. The half fare is raised one cent? A. Right.

Q. And the commutation rates are increased by the same ratio that the whole fare is? A. That's right.

Q. Now, that has two vertical columns in there, hasn't it? A. Yes.

Q. The first is present fare with no change in revenue. What does that mean? A. That is identical with the second column on Exhibit No. 22, being what the result in 1928 would be with no change in passenger revenue but including the increased expenses of wage and power, the net result being $281,000.00.

Q. So the first column ties on to that exhibit you filed just now? A. Exhibit No. 22.

Q. And is in fact a copy of that column from it? A. It is, yes, sir.

Q. So there is nothing new in that so far? Exhibit No. 22 was your estimate of the result next year with no change in fare? A. Right.

Q. And this starts with that estimate? A. Yes.

(Commissioner Harper) Then the proposed change would produce about 25% additional gross revenue?

(The Witness) Yes, that's right, on the basis that we figure the 5% loss through continuing loss of passengers, and possibly some loss due to the changed rate of fare. We have not attempted to make a division of that. I am not sure what it will be, but I think it will probably be 5%. I did testify before a possible loss of 2% due to the change in rate of fare.

Q. That was due to the change in fare alone? A. Yes, so that would leave a possible loss of 3%, continuing loss of business the way we have been going or less than we have been going this year.

Q. And in the columns and tables that were submitted by the People's Counsel last time or by the Engineer of the Commission what was the loss assumed there? A. The loss he assumed was 5% and he showed also a 10% loss.

Q. He assumed that as due to the raise in the fare, didn't he? A. Yes.

Q. So what you have assumed here is the 5% loss due in part to both causes, is that right? A. Yes. I did not say when we were going over the Exhibit No. 22, my personal opinion was that we would probably have a continual 3% loss during 1928 as against the business this year.

(Mr. Tingley) 3% under 1927.

(The Witness) 3% under 1927, yes. That would throw us in the deficit column to the extent of $143,800.00.

Q. Now, its the second column here then that contains

anything new as compared with the exhibit already filed, isn't it? A. That is right, yes.

Q. Will you explain to the Commission how you arrive at the results there shown? A. The first figure, Passenger Revenue, is obtained in the manner shown in the lower left hand corner. The first column shows the various classes of revenue, passengers for the year 1927, taking nine months as actual and three months estimated. The second and third columns show the present rates of fares and third columns show the present rates of fares in those classes and the proposed rates of fare and the last column shows the revenue at the proposed rates.

For instance the first county fare zone we have 2,318,269 revenue passengers estimated for the year 1927. It is proposed that the fare be increased from 4½ cents to 6 cents. The then new revenue for that first county fare zone would be $139,096.00.

In the second county fare zone the estimated revenue passengers for 1927 is 268,655 present rate of fare 5c, proposed rate 7c with a revenue at proposed rates of $18,806.00.

The third county fare zone 1927 revenue passengers estimated 44,979, present rate of fare 5c, proposed rate of fare 7c, with revenue at proposed rate of $3,148.00.

The Bethlehem Steel tickets estimated for 1927, 1,342,-368, proposed change in that case from 5c to 7c, with revenue at proposed rate of $93,966.00.

Total passengers in miscellaneous account, 7,992, passengers with revenue at proposed rates $292.00, that is from old householders tickets and such things that are gradually coming in.

The adult passengers who have paid the straight eight cent fare during the year 1927 are estimated at 7,354,512 passengers. The new rate will be ten cents, the revenue at proposed new rate will be $735,451.00.

The adult passengers estimated during the year 1927, paying 7½c fare is 196,392,128 passengers, who will pay ten cents under the new proposition with a total revenue at proposed rates of $19,639,213.00.

The half fare pasengers estimated for the year 1927, 8,079,263 present rate 4c, proposed rate 5c, estimated revenue at proposed rate $403,962.00.

The school passengers during the year 1927, 3,658,757, present rate 5c, proposed rate 5c, revenue at proposed rate, $182,938.00.

The total passengers for 1927 estimated 219,466,896 passengers at the proposed rates would be $21,216,872.-00, from that we have deducted the 5 per cent loss of $1,060,844.00, leaving a net passenger revenue of $20,-156,028.00, which we have called in that column $20,156,-000.

Q. That is the amount that's carried as the first item in the second column then of this table? A. Yes.

(The Chairman) You are figuring on your 5% loss of revenue by reason of a 5% decrease in passengers?

(The Witness) You would have to analyze all the passengers to allocate it, but we took the 5% loss. It would be approximately a 5% decrease in passengers.

Q. And that is figured to include any loss caused by an increase in the fare? A. Yes.

Q. And to any loss caused by a continuous nature of the present trouble? A. Yes.

Q. As compared with the whole year 1927?

(Commissioner Harper) From this table Mr. Emmons it would seem that the adult passengers paying the 8 cent fare don't amount to 4% of the number?

(The Witness) Our percentage is very small. I have some figures here if they are interesting to you, I think we are the highest in the percentage of token passengers of any city in the country. I think it's due to the fact that they buy them so reasonable. Fifteen cents is all they have to pay out. If it was four for thirty cents you would find the token passengers going down materially. In a good many places the percentage is down as low as 75 or 80%.

(Mr. Markell) It's easier to find fifteen cents in your pocket than eight cents.

(The Witness) Would you be interested in those figures, Senator? I can find them?

(Commissioner Harper) No, I don't want to break in on you now.

Q. Now then going down that second column there is no change in "Other Revenue."

A. No. We have assumed the same "Other Revenue."

Q. The total of course has the same change in it? A. The same change, being $20,391,000 as the total revenue.

Q. Now there is a change in operating expenses and that's explained by note A, is that right? A. Yes.

Q. Does that refer to the note on the lower half of the sheet? A. Yes. Now the operating expenses down to the 10,264,000 is the same as the operating expenses shown in the first column of this exhibit including the increased wages contracted for and additional power costs for the year 1928. We have added to that only an additional increase in wage of $130,000 in accordance with the promise we made the men that if we are in a position to give it to them that we would give them what they aimed for last year, a total of 55 cents. As I said here before it is our own personal ambition that as soon as we can our men ought to be raised at least to Wilmington's 56 cents and if possible to Washington's 58 cents.

(The Chairman) Of course there is no understanding of that?

(The Witness) No, the only promise has been made up to 55 cents. We have contracted only two 56 cents.

(Mr. Markell) 54 cents.

(The Witness) I mean 54 cents and promised up to 55 cents. They are getting 53 cents at the present time, but the contract provides that at the first of January they get the additional cent up to 54 cents.

Q. Now the next item in that right hand column is the item of Depreciation. A. Depreciation, yes.

Q. And there is no very substantial difference between

the amount of it as given in the first and the second. You are going to file a little later an exhibit on Depreciation? A. Yes, later we will.

Q. Can you explain generally what the difference is due to? A. The difference is due to the fact that we never have had sufficient depreciation. I think the members of the Commission, especially those that have been in all of the rate cases, will remember that in every rate case we had the question of meager depreciation allowances has been before them, and we had figured out through Mr. Bancroft Hill, who has very carefully figured it out, our property accounts and the needs for retirement reserves, and we have checked these in other places, and we feel that the $2,200,000 is the proper amount. That is about 4% of our depreciable property, which is a percentage held in many places and set up by many companies, and in——

(The Chairman) In many street railway companies? Do you know of many street railway companies that set up that amount?

(The Witness) Yes, Mr. Commissioner, I have here an analyses of Boston, Cleveland, Pittsburgh, Washington, St. Louis, Philadelphia and Chicago wherein I have had to put their maintenance and depreciation together, because as you remember in various cases it has always been shown that it is very hard to define the line between depreciation and maintenance. I think we have explained that our custom has been if we have a piece of work in one place that amounts to a thousand dollars or over we get an authorization for it and pay that out of depreciation. We may have an expenditure of over a thousand dollars, that is spotting in ties or spotting in poles or something like that that would go out of the maintenance account, but if we have a large renewal of special work or a large renewal of track or something like that, out of the depreciation reserve.

Q. In other words, the allowance for maintenance plus the allowance for depreciation is a much more satisfactory basis for comparison than taking that allowance alone? A. If you are comparing other cities. For instance Cleveland sets up nothing for depreciation. It

does all out of maintenance. So putting those together I find the average of maintenance and depreciation on a car mile basis, figured on the basis of Baltimore's car miles, would be $3,903,000. Baltimore's figures on the same basis are $2,645,000.

(Commissoner Purcell) What was the first city, Mr. Emmons?

(The Witness) The first city was Boston. Then Cleveland, Pittsburgh, Washington, St. Louis, Philadelphia and Chicago. For the year 1926 these figures are taken. It shows that Baltimore is short $1,258,000 of the amount of the average of these cities. Consequently adding that to the amount set up gives us about $2,100,000 as the figure comparable to what these other cities are doing in the two accounts.

Now we have another check that in asking for information the Washington Railways Company sent us a list of their account numbers with the percentages allowed by the Washington Commission, and in applying those percentages to the values of undepreciated depreciable property as given in the valuation gives a total under that basis of $2,150,000. 4% as I have said is taken very often as being about right, $2,220,000. We expect to bring men here from outside of the city who will go into this a little more fully after Mr. Hill has submitted his calculations, and I think you will find that he has made a very careful study of it.

(The Chairman) What I wanted to know was whether you knew of any city which took the percentage of the valuation as a basis for depreciation.

(The Witness) Yes, Washington takes a percentage of all the various items and quite a number of cities.

Q. The Commission means to take the valuation rather than the book cost as a basis for the depreciation allowance account. A. Yes, I think many of them do.

Q. Of course you can meet that by adjusting the rate to fit. You can take the books and allow a larger rate. A. By using that depreciation then gives a total operating expense and depreciation of $12,594,000.

Q. And you said there is more to be said later on on depreciation? A. Yes. Now I have also checked that total on the basis of allowances in other cities for percentage of gross revenue for maintenance and depreciation. A good many mortgages require a twenty per cent. allowance for those, and twenty per cent. of this estimated allowance for maintenance and depreciation plus the operating expenses gives $12,641,000, checking with the $12,594,000. Or taking another basis, taking the average of these eight companies that I referred to, and taking their total operating expenses per car mile as 37.34 cents per car mile, and applying it to Baltimore's car miles, would give $12,792,930, as against our $12,594,000.

The next item of Taxes is held the same. The next item of the park tax you will note was increased about $300,000.

Q. Of course that automatically increases with any increase in revenue? A. And the income tax, while we have none in the estimate of 1928 for the present revenue, we would have $355,000 under the proposed revenue. That makes a total of taxes of $2,247,500, or again about 11% of our gross passenger revenue which I think will still keep us in the forefront of the tax paying street railways of the United States.

Our operating income then becomes $5,549,500. Non-operating income we have kept the same as 1928 estimated figures which were the same as 1927, $171,000, giving a Gross Income of $5,720,500, our deduction being the same as in 1927, $3,445,000, gives a Net Income of $2,275,500.

To get the return figure there is an assessment made, as shown below, in which under Operating Expenses we add $13,207.00 which is interest on Bethlehem Steel Company construction and commission for paying coupon interest, and under taxes we deduct $3,786.00 being a tax refund on Sparrows Point bonds, and under non-operating income we deduct $133,000 in sundry items not properly includable in fair return, making a net fair return figure instead of $5,720,500 of $5,578,079.

Q. So in other words that partial or last column of all is entitled to adopt this exhibit for the basis of figuring the fair return on your valuation? A. That is so, yes.

Q. Without that last column the figure is your best estimate or statement of the net income for next year? A. On the basis of 5% loss on a ten cent fare.

Q. On the basis you keep your books? A. Yes.

Q. But these adjustments are necessary in order to arrive at a fair return, because you have to exclude non-operating income and exclude non-operating property, is that right? A. Yes, the assessments that are made in the other statements at the same time.

Q. So the figure $2,275,000 gives your estimated net income if you get these entire increases that are stated at the beginning of the schedule? A. On the basis of 5% passenger loss.

Q. Mr. Emmons, I believe that the only thing that you haven't gone into fully or in any detail is this matter of depreciation, and you say Mr. Hill will give the figures that he has prepared? A. Yes, I have gone over it with him and I think he has done a very wonderful and analytical piece of work, and I would prefer to have him give that.

(Mr. Howard) Mr. Emmons then is at the disposal of the other side.

NOTE: The Commission then adjourned for the purpose of taking a recess.

AFTER RECESS.

Thereupon—

C. D. EMMONS,

a witness of lawful age, produced on behalf of the applicant, having heretofore been duly sworn according to law and whose examination was suspended for the purpose of taking a recess, resumed the stand, was examined and testified as follows:

CROSS-EXAMINATION.

By Mr. Tingley:

Q. Mr. Emmons, you estimate that the decrease in passenger revenue for the first ten months of 1927 is at the rate of 2.80%?

(Mr. Howard) Are you referring to any particular exhibit?

(Mr. Tingley) I think it's Exhibit No. 1-A.

(The Witness) Yes. Exhibit No. 1-A shows for the first ten months 2.80.

Q. Do you estimate that the decrease in revenue for the total year 1927 will reach 3%? A. I think it will, yes, very close to 3%. We figure for the three months October, November and December 3.21. As I stated this morning, we are actually running over 3.21 at the present time.

Q. And you estimate that under present fares the amount of decreases for 1928 below 1927 might equal 5%? A. At the present fare?

Q. At the present fare. A. Oh, I said I thought possibly it would reach 3%.

Q. Didn't you file an exhibit showing 5, Mr. Emmons? A. For an increased fare, yes, I said 5, but on the basis of the present fare I said it would probably go 3%.

Q. So that the shortage in revenue for 1927 below 1926 will probably be 3% and 1928 will probably be 3% below 1927? A. That's continuous falling, yes.

Q. And under the ten cent fare the decline might run as high as 5% for 1928 below 1927. A. Yes sir.

Q. Now as I understand you the wage level of 54 cents has been contracted for? A. That is right.

Q. 55 cents has been promised in the event that an increase is secured in this case? A. In that case, yes.

Q. And 58 cents is the figure that you think should be made effective? A. I think the men should be put up to

58 cents as soon as we find our way clear to do it. I said first 56 cents to meet the Wilmington rate and eventually to 58 cents.

Q. Your power costs are steadily increasing? A. They have been, yes.

Q. Do you anticipate an increase in 1929 over 1928? A. That would depend entirely on whether or not we can keep Gould Street out of the 1929 picture. We had thought this; that 1928 would be considerably more than $25,000 more than 1927, but since my original statement, since that time I have assurances from the Gas Company that they will not include the capital charges of the Gould Street Plant in the 1928 set up.

Q. Are there any indications at all that the tide of automobile competition is being turned or is being stemmed? A. I think not. I think the second hand cars purchased by people working on the houses is largely the trouble. You go in any place where there is any construction going on today you will see that most of the workmen in that place have gone in some kind of a machine. A small house will have ten to fifteen machines in front of it.

Q. That's a tendency then that's on the increase rather than on the decrease, isn't it? A. I think so.

Q. So the industry, as you call it, is a standby service? A. No, I think it is still an essential service when 75% of the people are being hauled by the industry, but it's certainly very different from when we used to haul 100%.

Q. It's no longer being used for general transportation purposes? A. It is being used for general transportation services. I don't feel you can say when 75% of the people are using it it is merely a standby service, but for the other 25% it does become a standby service.

Q. But if the revenue and passengers were falling off at the rate of 5% a year wouldn't you infer that it was probably becoming a standby service? A. If it keeps on it will be but I think there will be some limit of it, Mr. Tingley.

Q. You don't think Mr. Markell was entirely accurate

when he called it a standby service in his opening statement? A. To these 25% of the people who we do not ordinarily transport it is to them a standby service. To the others it's an essential industry. They use it every day likely.

Q. Now in a situation of that sort where one type of service is being steadily superseded by another and is faced by mounting costs any permanency in rate levels is virtually impossible over any period of time? A. Excepting the hope that there will be some level reached some day.

Q. And unless that hope is justified the tendency would be toward constantly increasing rates, wouldn't it? A. Unless you get back to such a time when something happens to begin to get business back. I can't help but feel that the day must come when the making use of the city streets for an all day garage must be stopped. That will have some reaction in our favor, but as against that they are using machines now to go to their work in various places and you will find factories or a place lke Montgomery Wards, and a place like the Southern Can, just hordes of cars in front of them that the people have gone to work in.

Q. Now as the fares go higher and higher and more closely approach the cost of automobile operation, wouldn't the tendency be for a very large number of people to stop using the cars and start using the automobiles? A. If the fare reached what an automobile cost, but that's a long way off I think.

Q. But don't you think there is a difference in the convenience and character of an automobile and a car ride? A. There is no question about that, and that's the reason I feel if you cut your fare in half you wouldn't get your automobile rider back.

Q. So the automobile rider would tend to be a steadily increasing class in the next few years wouldn't he? A. It's quite possible.

Q. Now with a situation of that sort, where one kind of service is steadily cutting into another at the rate of 5% a year, and the industry is being faced by mounting

costs, how far do you think a commission is justified in going in imposing the entire cost of service on the remaining users of the service? A. Still cheaper than the remaining users using an automobile. A great deal cheaper.

Q. What would you think would be the limit beyond which the Commission would be justified in going? A. I think I said in the last case that if it looked like more than ten cents would be required then you would have to come to the matter of zoning.

Q. Ten cents seems to be the economic limit in the unit of fare? A. I don't think it's the economic limit. It's the limit I think that you ought to have for the short rider. When you get over that you have got to get in some kind of a zone so the long rider really does pay something more than the short rider.

Q. That's the value of the short ride then? A. Ten cents.

Q. When the Company is now asking for the amount which you consider is the ultimate value of the short ride, do you think it's good policy to contemplate further increases in wages? A. I think this. That our men are entitled, certainly entitled to what we have promised them. I think the men have been splendid in their cooperation with us, and I don't think any person would think the men should get anything less than the 55 cents.

Q. And that in spite of the fact that your revenues are falling off at the rate of 5% a year from year to year and that you are faced with an increase in burden of cost, and after you are now asking for a rate that you believe to be the value of the service? A. I don't know whether you realize this, but there is such a thing as paying these men an amount that will keep them with us, and there is a great deal in avoiding a turnover among the men. If we do not pay them enough the men quit, get other positions and we have to get new men to train. It makes bad service, it makes accidents more possible, and the more we can hold our men with us the better it is I think for all concerned for the public who are being carried by the men and the question of accidents and the question of ultimate low costs.

Q. How do you think that a situation of the sort that we are discussing of an industry with its revenues falling off at 5% a year and its costs steadily mounting, how do you think a situation of that sort should effect the rate of return that the Company should receive on its property? A. I don't see that it has anything to do with it.

Q. You don't think it has any bearing at all? A. I don't see any relationship.

Q. What return do you think this Company should be entitled to? A. I think 8%.

Q. And you think it should be granted a rate that will yield 8% regardless of the amount of revenue and revenue passengers and regardless of the increase in cost? A. In our estimates we are not asking for 8%, but we think we ought to work up to eight per cent.

NOTE: Previous question and answer here reread by reporter.

Q. Do you think that you ought to be permitted to earn 8% regardless of the amount of decrease in revenue passengers and regardless of the amount of increasing costs? A. There must be some stabilization there. Certainly I wouldn't think that we ought to be permitted to charge 25 or 50 cents to earn 8%.

Q. Where does the turning point come? A. Well, I said I think ten cents for an original fare at the present day is all we should charge for the original fare. Now if that doesn't make it it might be that the remaining ride will have to be zoned some way.

Q. Mr. Emmons you called my attention today to an error I made in my opening statement yesterday. I stated that Detroit under the 6 cent fare was earning 7½ per cent. on the value of its property. A. Duluth.

Q. Yes, Duluth. You called my attention to the fact that the flat rate of eight cents, the token fare seven cents, and that the Company is only earning 1.82 per cent. on the property. A. Yes.

Q. The 7½ per cent. was what the Commission allowed the Company in 1925 or determined that it was entitled to. A. But they are only earning 1.82.

Q. They are only earning 1.82%? A. Yes, but I understood you to say they were earning over 6%.

Q. I thought they were. I am very much gratified that they are not, because it fits in so beautifully in the case.

What street railway companies in cities comparable to Baltimore are earning an 8% return? A. I haven't any information as to that.

Q. Do you know which ones are earning a 7% return? A. I haven't looked that up.

Q. 6% return? A. I have made no study of the return in other cities.

Q. Isn't it true that they are all earning less than 6%? A. I think they are all in a very difficult situation.

Q. How would you account for that? A. I think that it's the same trouble the country over. It's the influx of the automobile taking away the business of the street railway.

Q. Don't you think that value of service has a very important effect on the rate of return being earned by street railway companies? A. I do not. I differe with you on that idea.

Q. Don't you differ with Mr. Hoyt, too? A. On the value of service?

Q. As to the effect of value of service on the rate of return in the case of a street railway company? A. No, I don't think that I do.

Q. Don't you know that Mr. Hoyt testified in Case No. 1915, in the Gas Company case, that he thought value of service in the case of a street railway company did exercise an influence? A. I know nothing about his testimony in the gas case.

Q. So you don't know of any cities charging the 10-cent basic fare that are earning an eight per cent. return? A. I know Boston is guaranteed a 6 per cent. return.

Q. On what? A. On an aggregate valuation.

Q. Which is based on its capitalization? A. Yes, it's on its capitalization.

Q. Did it earn it in 1926? A. I think it did.

Q. Paid about $400,000 out of the tax rate in 1926? A. I am not sure. I remember one year the tax rate paid something like over three or three and a half million dollars. I didn't know what last year was, but that isn't very far under a 6% return, however.

Q. Actually, of course, if a company is being subsidized out of the tax rate the fare is really more than ten cents, isn't it? A. To the extent of the subsidy, but $400,000 on the revenue passengers carried in Boston would be infinitesimal really.

Q. If you add in the valuation of the subway system there would you be surprised to learn that they only earn 4% on their valuation last year? A. Well, they pay a rental on the subway.

Q. Capitalizing that. A. I wouldn't be surprised that was so. The subway is extremely expensive.

Q. What interest rates are being paid by the company to the banks on its loans? A. About 5%.

Q. What interest rates were paid last year? A. All during the year.

Q. Yes, sir? A. We have been as low as 4½ to 5.

Q. Is there any reason for this company getting a higher return than that prevailing among other street railway companies? A. If the other street railway companies are not getting a fair return that's no reason why we should not get a fair return.

Q. But mustn't there be some reason for a condition of that sort prevailing throughout the entire industry over a long period of years? Mustn't there be some basic reason why that hasn't been rectified before? A. I think the only basic reason is that the street railways haven't for years gotten a fair amount for their services.

Q. Why not? A. Because they haven't gone and gotten it.

Q. The only reason that the street railway companies over the country are earning 6% or less as an industry is that the industry has been indifferent to getting what it's entitled to? A. I think the industries endeavored to get along on a lower rate of fare than they are entitled to.

Q. Isn't that a surprising thing to find in an entire industry when other utility companies are receiving as high as 8 or 10%? A. I think the industry has largely lived in hopes that they would come up to that. I think they are beginning to see today that they haven't any hopes. At the present time I think you will find, I think I have a record of it here, at the present time you will find 16 pages of fare cases pending, and since the first of the year there have been 38 changes in fare over the country.

Q. Isn't this surprising, Mr. Emmons? Isn't it surprising that if in 1925 the Minnesota Commission recognized the right of the Duluth Company to earn 7½% on its property it is only earning 1.42?. A. That's an unfortunate position for the Duluth Company.

Q. What would you say was the value of the street car ride in 1913, Mr. Emmons? A. I think I said in my previous testimony even at that time five cents was not sufficient to cover it, and the annual reports of our company at that time in many places called attention to the fact that with the expenses going up that five cents was not enough.

Q. Why was it that even before regulation the industry as a whole was so indifferent to its own welfare that it didn't ask for what it thought it was legally entitled to? A. I think they all lived on this hope of five per cent. increase in passengers finally bringing them out of the woods, and until 1920 we did make a 5% increase in passengers.

Q. But we don't live on hopes if we can get something more substantial do we? A. Often a public service corporation does for years.

Q. Even if there is no regulation except legislative regulation? A. Yes, I think that's true.

Q. 5 cents was the almost universal charge for the service in 1913, wasn't it? A. Yes, and against that I think ten cents probably will be very shortly.

Q. What leads you to think that? A. Because I think ten cents today is just as near the street railway figure as five cents was at that time.

Q. Wasn't the fact that five cents was the value of the service in 1913 indicated by the fact that in 1913, in the first fare case, the company only asked for part of its increased cost with which it was being faced during the War? A. I think the whole fare increases have been a mistake. I think the real mistake was when costs all double that the fare at that time wasn't increased immediately like the wages of people and everything else to a ten-cent fare at that time, then we wouldn't be having this difficulty of a property that has been struggling along and having to come in time after time for fare increases.

Q. Has the industry as a whole just awakened to the fact that its property has been confiscated for a period of 17 years? A. I think they largely awakened to that fact that they are not getting a fair return.

Q. What factors do you think fixed the rate in 1913 at 5 cents? A. Just the old contractual agreements with the cities all over the country. Five cents was supposed to be the standard street railway fare.

Q. What do you think was behind that? What do you think determined the value of the service originally at 5 cents? A. I think it's the convenience of the nickel and it seemed to cover it at that time.

Q. A dime or a quarter or a penny would be just as convenient, wouldn't it? A. But the penny wouldn't cover it. The dime would be just as convenient, but the cities wouldn't contract for it at that time and it wasn't required at that time.

Q. During the Civil War period the fare was increased to 6 cents wasn't it? A. That's beyond my memory.

Q. And then it was put back again to five cents, in fact even prior to a resumption to normal conditions?

(Mr. Howard) I think I remember when it was 6 or 7 cents.

(Mr. Tingley) 6, I think, Mr. Howard.

(The Witness) There is a quite a history along with that Mr. Tingley. If I remember the history of it it was five cents plus one for transfers, and you remember at those times a company did not give transfers from one to the other, and in a good many cases you had to pay five cents on one line and five cents on another, so that your ride at that time from one part of the city to another would cost you ten cents.

Q. What factors do you take into consideration in determining the present value of the street car ride? A. Well, it must cover its cost and a fair return on the property used to make it.

Q. And a fair return is 8 per cent.? A. Yes, I think it is.

Q. Even though the industry is not earning it? A. I think they should earn it.

Q. I think you testified in the emergency case that if free transportation were not issued to the employees that salaries would have to be increased? A. I said it might cause them to ask for an increase in salary.

Q. Would that indicate that the carfare pays an important part in the budget of a working man? A. I don't think particularly so. Our men pay nothing, but if they had to pay they would pay the full amount.

Q. Do you think that any increase in fares might necessitate wage increases in all industries? A. I don't think so, because generally the wages have more than doubled what they were before.

Q. That's true of the wages of street railway men, isn't it? A. More than double, yes, sir.

Q. Do you think that a new industry contemplating locating in Baltimore, and employing a large number of men would be attracted or repelled by the fact that carfares were higher than in comparable cities? A. I don't think it would be particularly by reason of a small in-

crease over other cities. It depends on what cities you are comparing it with.

Q. Mr. Emmons, in "Ask me another about the car-fare" issued in August, 1927, that pamphlet by the way was issued to acquaint the public with the company's need for a fare increase, wasn't it? A. Just to try to answer some questions that were being asked.

Q. Question No. 2. "What cities similar to Baltimore have a basic ten cent fare?" "A. Pittsburgh, Cincinnati, Boston, Chicago (Elevated Lines), Seattle, Washington, and Buffalo, New York."

You are not familiar with the rates of returns that are are being earned by those companies, are you? A. I am not.

Q. Do you consider traffic and operating conditions in all these cities comparable to those in Baltimore? A. Some of them are much easier. I don't know that any of them are worse.

Q. What does basic ten cent fare mean? A. It means ten cent cash fare, and some of those have a reduced rate for buying in quantities.

Q. All except Boston, haven't they? A. All except Boston, in that list, I think.

Q. In Seattle, Cincinnati and Buffalo are not transfers issued free to bus lines operated by the company? Aren't they? A. I do not know that.

Q. What is the basic fare of the Chicago surface lines? A. Seven cents, I believe.

(Mr. Clark) It was eight and they reduced it.

Q. Do you consider surface lines and elevated operation comparable to render Chicago elevated railroad basic fares of any significance in determining Baltimore surface line fare? A. No, I think the expense of operating elevated is more than operating surface lines. Chicago itself is quite different from Baltimore, and the number of people it has, the density of traffic.

Q. When was the basic ten cent fare made effective in

Pittsburgh? A. I am not sure I can tell, but it was several years ago. Yes, I can tell you that.

Q. It was some years ago, wasn't it? A. I can give you the date, if you wish. In Pittsburgh on August 1st, 1919, they went to ten cent flat fare, four for thirty cents, and on September 1, 1920, they changed the four for thirty cents to three for thirty-five cents. Then in 1924 they started the dollar and a half weekly pass, July 1, 1924.

Q. When did Cincinnati go to the ten cent basic fare? A. Cincinnati went to the ten cent fare with 9½ cents for tickets on July 1, 1924. Then they went to a flat ten cent fare on October 1, 1924, and they changed to a ten cent, three for a quarter on November 1, 1925.

Q. When did Boston go to the basic ten cent fare? A. A. On July 10, 1919.

Q. When did the Chicago elevated lines? A. I think I haven't that information here.

Q. How about Seattle? A. I have not that. I had a memorandum about Seattle, I might have that. It was prior to March 1, 1923, because on March 1, 1923, fares were reduced from ten cents cash, three for a quarter to five cents cash, two cents charge for transfer, and they tried this out for three and a half months, and went back again to the ten cent cash, three for a quarter, so it was about July, 1923.

Q. How about Buffalo? A. July this year went to ten cents, I think.

Q. Mr. Emmons, the fact that the greater number of these companies increased their fares to a ten cent basic fare a number of years ago, wouldn't give rise to any inference to increasing the fares to this point at this time? A. I don't see where there would be any conclusion drawn from that, because I said just now there were 38 fare changes since January 1, 1927. There are sixteen pending cases, and there were 12 changes to a ten cent rate this year.

Q. The increase to ten cents in Boston was made in July, 1919, wasn't it? A. Yes.

Q. You were then president of the Boston Company? A. I didn't rank as president. I was general manager.

Q. Pardon me. Wasn't the service at cost plan put into effect in Boston in July, 1918? A. It wasn't so much the service at cost. It was a State control under a board of five trustees which guaranteed a six per cent. return.

Q. Guaranteed a six per cent. return? A. Yes, sir.

(Mr. Howard) Guaranteed it? The cities and towns pay the deficit if there is any.

Q. That was in July, 1918, that they assumed control? A. I think that is right, yes.

Q. Then the fare was increased from five cents to seven cents one month after that, wasn't it? August 1, 1918? A. I will get that record. August 1, 1918, it was five cents to seven cents, yes.

Q. And on December 1, 1918, to eight cents? A. Right.

Q. To ten cents July 1, 1919? A. Right.

Q. Now the plan contemplated that the Company should get the cost of service, including interest on borrowed money, dividends on preferred stock, and on common at the rate of 5% for the first two years thereafter ranging up to 6 per cent., wasn't that it? A. I think that is it, yes.

Q. Not until September, 1919, did the Company earn the cost of the service, did it? A. No.

Q. And then from September, 1919, to February, 1920, it did earn the cost of service, didn't it? A. My recollection was the year 1919 as the year failed very largely to meet the cost of service, and that was the reason that in the summer of the year 1919 they went to the ten cent fare. I think even with that six months of ten cent fare, there was a very large deficit. I think in 1920 with the full year of ten cents it did get the cost of service.

Q. In February, 1920, there was a loss of $372,000 due to the expense of removing snow? A. I don't remember, I know there was a very bad snow storm last year.

Q. The cost of the first year of public operation ending July 30, 1919, was $4,480,000, wasn't it? A. I thought it was something over three million and a half. I guess that is probably right.

Q. And didn't all but a few hundred thousand dollars of that have to be made up out of the tax rate? A. Yes, the cities and towns paid the deficit.

Q. Is the Company now earning 6% of its valuation? A. You said it failed of $400,000 last year, I wasn't sure. I thought it was earning the 6%.

Q. The ten cent fare in Boston wouldn't seem to furnish any stronger argument for a ten cent fare in Baltimore than the five cent fare in New York furnishes for a five cent fare? A. I don't think so. I think it's a question here as to the problem we have before us right at this point.

Q. With what company were you connected prior to becoming connected with the Boston Company, Mr. Emmons? A. I was vice-president and general manager of the Boston Worcester Street Railway, and that was an interurban double track line.

Q. When did you become connected with that company? A. August 1, 1916.

Q. Was there any fare increase during your incumbency? A. I think there were several of them.

Q. You came to Baltimore one month after the increase to the ten cent fare in Boston, didn't you? A. Yes.

Q. In the 1919 Baltimore case, the first Baltimore case, didn't the company, thru Mr. Zimmerman, ask for a basic ten cent fare? A. I don't remember. I didn't come into the so-called six and a half cent case.

Q. You believe that a ten cent straight fare is the logical fare for street railway operations? A. I think it's the necessary fare.

Q. Is there such a thing as a logical fare regardless of the circumstances of the company? Applicable to all companies, I mean? A. I am not quite sure as to answer to

that. I think as I said before many companies are getting less than they should have at the present time, and I think the day is not far distant when a ten cent fare will be just as common as the five cent fare used to be.

Q. Coming to question No. 3 of "Ask Me Another About the Carfare," "What other cities only slightly smaller than Baltimore have a basic ten cent fare? A. Albany and Syracuse in New York, Salt Lake City, Utah; Springfield, Ill.; Portland, Me.; Worcester and Springfield, Mass.; Des Moines, Ia.; Omaha, Neb.; Toledo, Ohio; Fort Worth, Texas, and Knoxville, Tenn." You don't know what returns those companies are earning, do you? A. I do not.

Q. How would you say they compare in population to Baltimore? A. Well, they are lower as the statement says.

Q. How much lower would you say the average was? A. I am not sure of that. If you will read them out, I will read the population to you Mr. Tingley.

Q. Albany? A. 113,000.

Q. Syracuse? A. 171,000.

Q. Salt Lake City? A. 118,000.

Q. Springfield, Ill.? A. There are 1920 population, Springfield, Ill., 59,000.

Q. Portland, Me.? A. 69,000.

Q. Worcester, Mass.? A. About 180,000.

Q. Springfield, Mass.? A. About 130,000.

Q. Des Moines? A. Des Moines, Ia., 127,000.

Q. Omaha? A. Omaha, 192,000.

Q. Toledo? A. Toledo, 243,000.

Q. Fort Worth? A. Fort Worth, 160,000.

Q. Knoxville? A. Knoxville, 78,000.

Q. It's hard to call those cities only slightly smaller

than Baltimore, isn't it? A. That might be a little misuse of the word slightly.

Q. How many of them sell tokens at reduced rates? A. I will have to find that.

Q. Would you say most of them did? A. I think most of them do.

Q. How many of them have the weekly pass? Would you say most of them did? A. No, I wouldn't say most of them have.

Q. How many would you say? A. That would be a guess. I don't know.

Q. Question No. 4: "How many cities in the country with more than 25,000 population have a basic ten cent fare? A. 114 cities." How many of those cities would you say have a population of 100,000 or more? A. I haven't analyzed it.

Q. Most of them have the provision for the sale of tickets or tokens at reduced rates, haven't they? A. A great many of them have, yes. There are only 21 I think we gave of purely 10 cent cities.

Q. Aren't the only flat ten cent rate cities in the country, the following: Joliet, Oak Park and Cicero, Ill.; Bangor and Lewiston, Me.; Boston, Worcester, New Bedford, Cambridge, Sommerville, Malden, Newton, Medford, Brookline, Everett, Waltham and Attleboro, Mass.; Newport and Woodsocket, R. I., and Columbia, S. C.? A. That sounds like the list, I think it is right.

Q. What would you say was the population of the largest of those cities? A. Boston is the largest, of course.

Q. Leaving Boston out? A. I will give you the population if you read the cities.

Q. That's a long list, what would you say was the highest? A. Well, I don't know, some of them are considerably over 100,000. Worcester, for instance, is pretty close to 200,000 and Cambridge, Mass., is 100,000.

Q. Most of them are less than 50,000, aren't they? A.

No, I don't think most of them are less than 50,000, no. I think most of them are more than 50,000.

(Mr. Howard) By the way, all of those population figures are from what census?

(The Witness) 1920.

Q. Are any of those cities suburbs of or located near Chicago? A. Yes, those first three cities, I think are, yes.

Q. Which ones are located at or near Boston, and served by the company that serves Boston? A. Malden and Cambridge and Somerville, I think those three names you gave.

Q. I think this was an inadvertence, but early after the petition was filed there was a statement in the papers that the United Railways had stated that Cumberland was the only city in Maryland with a ten cent fare. What is the fare in Cumberland? A. Mr. Swaine thinks it's ten cents. I am not sure.

Q. It's ten cents for the first zone outside of the city, but it's seven cents inside. It's an interurban line? A. That may be right.

Q. Do you recall that in its opinion in case 1682, the United Railways Case, the Commission said: "The fact that considerably more than 100 cities thruout the country have a base fare of ten cents, is no reason why Baltimore should have a ten cent fare, any more than that these cities should have the rates prevailing here"? A. That may be a good reason. That doesn't determine it, of course.

Q. As a matter of fact every city presents peculiar problems of its own, doesn't it? A. They do, yes.

Q. And they render it insusceptible of comparison to others? A. To a large extent.

Q. And there are lots of cities that have a base fare lower than here? A. Yes, and most of the cities in trouble, too.

Q. Well, we have trouble here apparently. Does the

United Railways here head the list of eight principle cities in efficiency and economy of operation? A. I didn't think we put it that way, but we had a report an exhibit which showed the comparison of our operation with the operation of other cities.

Q. If that is a fact why should it be necesasry for the Company to virtually lead the industry in the amount of fare charged? A. Well the difference is so little that it doesn't make up the amount we need for our own purposes.

Q. Were you correctly quoted in saying that a repeal of the park tax would obviate the necessity of a ten cent fare? A. No, I was not.

Q. You were quoted to that effect? A. I said it would help. I was so quoted, but I never said it would obviate the necessity of an increased fare.

Q. How much does the Park Tax amount to under the present fare? A. About $1,150,000, something like that.

Q. How much does it amount to on the fare? A. .7% of the fare.

Q. And in terms of cents? A. That would be something over half a cent.

Q. Would that indicate that an eight cent fare would tide the company over the present situation? A. It would not.

Q. In a time of emergency, or alleged emergency, any increase granted ought to be as small as possible? A. The emergency is over, we are here now for a real case.

Q. The emergency is over? A. No, the emergency isn't over, the emergency case is over and we have had to go two months without relief, so this isn't emergency now, this is real facts.

Q. I think Mr. Tompkins stated in a statement issued October 20th, that the Company wanted a ten cent fare so that it could increase its schedules 10%. Is that correct? A. We said we would like to increase our schedules 10%. There are a lot of things we would like to do.

I said in my own testimony that I felt real good service ought to have not less than ten minute headways on the lines, but we haven't the money to do it, some of them are 12; some of them 15.

Q. Would the remote possibility of getting a 10% increase in schedules be the only benefit the public would get out of a fare of ten cents? A. We haven't had a rate case yet, but that everything we got has been taken away from us. We want to give the very best service we can with the money we have. I have been blamed for making promises I haven't carried out. I don't know of any promise I have made that I haven't carried out. If I had the means to carry it out, and at the present time, we are not asking for something to do something with that we have got to spend the money again.

Q. It was stated at the time of the skip-stop case that as soon as the decision was handed down the Company contemplated doubling the number of stops which had been eliminated. Does the Company still have that plan in mind? A. Doubling the number that have been eliminated? At the present time, we have not.

Q. It was stated at that time that that would be consistent with good service. Do you think that would be now? A. I think evidently it would be. It increases the speed of the cars and helps to give better service.

Q. Do you intend to make that effective during 1928? A. We haven't made any plans about it at all, Mr. Tingley.

Q. You estimated I believe that the economy from skip stop operation would be $130,000, didn't you? A. No, I don't think it was that much.

Q. I didn't think it was that much, but I think it was stated at that, Mr. Emmons? A. No, just a minute.

Q. I think we have those original sheets that you are looking for, Mr. Emmons? A. How did you get them out of my book?

Q. If they were in the book, we haven't got them? A. I think I have another set in my book. You are right, it is finally figured at $137,000.

Q. And if the number of stop eliminations were doubled, would a similar amount of economy result from that? A. I doubt that very much. That a simliar amount would.

Q. What do you think the extent of the economy would be? A. That would be a guess.

Q. What would you guess? A. I don't know, it might be half of this.

Q. Mr. Emmons, returning to Exhibit No. 1A, in 1928 forecast in the emergency case the rate of decreased passenger revenue was estimated at four per cent., wasn't it? A. I think so, yes.

Q. The actual decline for the first seven months of this year, October estimated has been 2.80%, hasn't it? A. That's right.

Q. And September and October estimated showed 3.21%? A. That's right.

Q. November and December would have to show a 4% decline to make the decline for the year 3%, wouldn't it? A. We have gone 3.7 for October to date, instead of 3.21, so that would be a little less than 4% likely.

Q. Won't the average decrease for the year in all probability be less than 3%? A. I fear it will not. I wish it were so.

Q. If that were the case, or if the Commission should believe that it would be the case, wouldn't the Company's exhibits on the effect of the ten cent fare for 1928 have to be revised? A. No, I don't think it would. I think we will still have about a 5% loss.

Q. Wouldn't you say that the indications are that the situation is improving as against May, June and July? A. No, not a bit.

Q. Wouldn't you say that May, June and July merely represented an accentuated seasonal decline that was experienced by all business? A. I think not, no, because the four months generally are not and we are not coming back.

Q. Taking Exhibit 3-A for just a minute and keeping Number 1-A also before you? A. Yes.

Q. The decrease shown there is 3.33 which you explained this morning by stating that it included chartered cars? A. It does, yes.

Q. Now if business continues at that rate, and allowances made for the fact that the last day of the month this year is Monday, as against Sunday last year, won't the result be 3.11% instead of 3.33 for the month? A. No, I don't think so, not if we keep on going forward like we have the last few days. For instance yesterday, which isn't on here, were went back 4.9%. The day before that we went back 4.8%. The day before that 4.9%. We are running pretty near to 5% back.

Q. What was it the day before that? A. That's the time I want to quit, but that was 3%. Now don't go one further because we had an increase. That was last Sunday.

Q. Turning to Ex. No. 2-A, doesn't the fact that passengers decreased 2.15% and revenue 2.80% indicate that the reduced fare riders are increasing? A. No. It indicates that the high fare riders are decreasing. It's the converse of that.

Q. And no decrease in the lower fare schedules? A. I think that simply shows that the decrease is in the man that rides the automobile. He is the one we are losing.

Q. Now July showed 4.20%, didn't it, decline? A. Yes.

Q. And August 2.8 decline? A. Yes.

Q. And September 2.72? A. Yes.

Q. Wouldn't that show a progressive rate of improvement? A. No, October shows 2.91. It's going the other way now.

Q. That's an estimated figure for October? A. Yes, but you notice how closely our approximation and the estimates were in these corrected figures. What I mean is we figured August approximately——

Q. I understood what you meant, Mr. Emmons. A. All right then.

Q. Taking Ex. No. 3-A? A. Yes. Which one, September or October?

Q. I only want to ask you one question that doesn't refer particularly to either sheet. As I understand it only 560 additional cars were operated during the time that the Fair of the Iron Horse was going on? A. I said we sent 560 special cars to Camden Station. Now that doesn't mean that that is all that was operated. I don't know how many was operated. But we had that particular amount of extra service to Camden Station.

Q. How many people would those cars handle? A. You mean standing up, 50% overloaded or seated or what?

Q. In compliance with the regulations of the Commission? A. We might average 60 to 65.

Q. And how many would you say would be the total number that would be carried by that fleet of cars? A. Well, at 60 that would be somewhere around 60 to 70 thousand people.

Q. And most of those people if they hadn't ridden out to the Fair of the Iron Horse would have ridden to work? A. Possibly that might be the reason why the Iron Horse did not help.

(Mr. Howard) They didn't spend all day at the Iron Horse, Mr. Tingley?

(Mr. Tingley) I did.

(The Witness) A lot of people went to work first and went to the Iron Horse in the afternoon. It was well worth seeing, however.

Q. I beat the System by going on Columbus day. Now turning to Ex. No. 6b. A. Yes.

Q. Doesn't that show an increasing rate of return from 1921 to date?

(Mr. Howard) That was the one filed later?

(Mr. Tingley) Yes, it was not filed in order, Mr. Emmons.

NOTE: Question here reread by reporter.

A. Well, if the slight increases from 4.858 to 5.19, 5.326, 5.328, 5.487, 5.525,—yes, it does show a slight change.

Q. Doesn't it show increasing revenues from 1922 to date? A. Slightly, yes. Very slightly but 1927 will now show that.

Q. We want to count all of them. Now turning to Ex. No. 7-C, haven't maintenance costs been cut recently? A. No, our budgets have been running about as they have heretofore.

Q. Weren't 70 maintenance of way men dropped during October? A. That's seasonal. We drop maintenance of way when work runs out and then we pick them up again. I didn't know they had been dropped. It's probably so.

Q. What has been the total maintenance cut during the month of October?

(Mr. Howard) As compared with what?

(Mr. Tingley) The previous month of the same year?

(The Witness) Our October figures are not complete, Mr. Tingley, I couldn't tell you.

Q. Can you approximate it, Mr. Emmons? A. Not without my budget sheet here, and I haven't got it. What happened in the maintenance of way, it's actual expenditures in September were $65,426.00; in August were $64,488. In the summer time it was higher. As I say that's a seasonal thing. In July it was $72,482. In June it was $77,066. Now if we look at the years prior I think you will find that there is not any particular change in them.

Q. Hasn't there been a cut in service since June of this year? A. We have made some changes, seasonal changes to meet the conditions, yes.

Q. Has the cut in service been greater than the reduction in revenue passengers carried? A. At times, I think it is. When we have a condition to meet that might make it that way.

Q. Haven't other economies been put into effect this year? A. In what form?

Q. In any form? A. Well, we have been trying to economize in keeping after our power records. In our lubrication of cars, looking after the dragging of brake-shoes and all that kind of thing. We are always trying to keep our expenses down.

Q. Wouldn't those factors indicate a greater reduction in operating expenses for the last three months of the year? A. No, because we were doing that same thing last year at the same three months. It is just about a year ago that we intensively got into this.

Q. A good many of your economy methods weren't in force during the entire nine months of this year, were they? A. Yes, this year they were, but the first part of last year, part of the nine months of last year they were dropped.

Q. Were most of them in force during the entire first nine months of this year? A. I think the question of power saving, with the exception of the work the shops had to do to relubricate the cars and readjust the brake shoes, which started last fall, I don't think it was entirely completed the first of this year, but I think it was largely during the first part of the year.

Q. In view of the curtailment of service to meet the curtailment in the number of revenue passengers, how do you account for the fact that no actual saving in operating expenses has been experienced? A. We just about absorbed the 2% increase in wages given to the employees.

Q. Turning to Ex. No. 8 for a moment, Mr. Emmons. A. Yes.

Q. That amount of $1,182,000 was the Company's own estimate originally, wasn't it, Mr. Emmons? A. No, I

thought it was the Commission's estimate, I have forgotten really what it is.

Q. At all events, it wasn't an amount that was guaranteed by the Commission to the Company, was it? A. No, nor felt by the Company to have been sufficient.

Q. It was an amount that the Company should earn if it could earn it at a reasonable rate of fare? A. No, I think the Commission felt we should earn a million and a half, if we could earn it.

Q. Turn to Exhibit No. 22, Mr. Emmons? A. Yes.

Q. What was the purpose in not showing the effect of increased revenues in 1928 over 1927 as well as decreased revenues? A. Because it was an absolute forlorn hope. We haven't any idea of any possibility of an increase.

Q. Can you say the same thing about 1929? A. That's too far away.

Q. Upon what do you base your assumption that 1928 will not be a better year than 1927? A. This is true that we are having continual and continuing decreases thru the growing use of automobiles. I am afraid that when Ford gets his factory going of a thousand cars a day, it will get worse. We have a slight business depression that will not get better until after the Presidential campaign. So I can't see anything but a continual loss in the year 1928.

Q. Is it true that the situation is getting worse or hasn't the rate of decline improved since the summer months? A. I don't think it has. When you are going 4.9% back now that's not showing any better.

Q. But you are not for the month, are you? A. Not for the month, but that's the trend now for the last four days.

(Commissioner Harper) Doesn't Ex. 2-A show that after a bad year there is an improvement? If there is anything in the past history?

(The Witness) You mean from 1920 to '21? That was absolutely business depression, Senator. At that time the automobile hadn't come into the picture the way it

has, but at the present time it's the automobile rather than business depression in my judgment.

(Commissioner Harper) The same thing happened 1924 to '25.

(The Witness) That was a very slight fluctuation. I am sorry I have to be a pessimist. It isn't my nature.

Q. In previous cases, before the Commission, have you been pessimistic, as to forecasts of the coming years, Mr. Emmons? A. I don't think so. I think we have been rather optimistic.

Q. Why is it that there is something about 1928 that distinguishes it from any other year that you have ever known? A. Because the automobile has come into the picture so very seriously.

Q. More in 1927? A. I think more in this year than any year in our history.

Q. And you don't see any indication in the turning point being reached? A. I do not.

Q. And you don't think the immediate future will show a turn in that? A. I do not.

Q. And you think that the rate of decline will continue at the rate of 5% a year? A. I said 3% and I have added 2% for possible additional loss on account of the increased rate of fare.

Q. Mr. Emmons what has been the total increase in salary paid to officers during the last year? A. I think it was very little. There has no change been made in the officers pay roll during the last year. I really think there is none Mr. Tingley that I can remember.

Q. That's from January 1, 1926, to date? A. I think we have had an added office since that time.

Q. What has the total amount been of all increases? I don't want it individually? A. I think I have the figure that will show you what you have asked me. The individual amounts have not been changed, I can tell you that. If there is any change it's due to added officers.

Q. What was the last general increase in the salaries

of officers? A. I think it was two years ago last April. Last April there was no change.

Q. In view of the desperate situation that is indicated by this exhibit, has any reduction in salaries or wages been discussed or contemplated? A. No, there have not.

Q. When the revenues of a utility begin to fall off at the rate of 4 or 5% a year, is it an indication that its service is being superseded by another service? A. I think it is quite evident that it is being superseded by the private automboile.

Q. And in a situation of that kind, you think that the remaining customers of the service ought to be saddled with the entire cost until it comes to a point when they can pay it? A. No, I don't think that's the way to put it.

Q. How would you put it? A. I would simply put it this way. They are getting for even the rate for which we are suggesting a much cheaper rate in service than they can get by providing their own private vehicle; that if they can afford to have their private vehicle, then they will not object to paying the ten cent fare. If this amount suggested does not cover it, then as I said before, we have got to find some other means of zoning or otherwise so that the long rider pay a greater proportion than the short rider.

Q. Wouldn't the present trend indicate that most of the riders, the revenue passengers that you would lose would be short riders? A. I do not think so. That's the reason I purposely went into the long and short riders this morning. It wasn't the question before us, but I am quite clear in my mind that it isn't particularly the short riders, but it's just because the short rider percentage looks higher than the long rider percentage, due to the fact that the long rider population has increased.

Q. If that were true however, the Park Tax estimate would have to be revised, wouldn't it? A. The Park Tax percentage has been changed. Has been changing downward.

Q. In this exhibit I mean, Mr. Emmons? A. It has

been changing some. I don't know that it might be a little bit less, but not much, it's immaterial.

Q. What is covered by the item deductions? A. Fixed charges.

Q. Does the fact that no increase in deductions is estimated indicate that no additional funds will be required by the Company in 1928? A. We do not expect to have it. We haven't figured on having it.

Q. Why is an additional power cost of $25,000 estimated? A. That's due to the fact that some additional expenses on the part of the Gas & Electric Company will have to be borne by our corporation.

Q. Has that been actually determined? A. Practically so. No, it can't be determined finally until the year is over, but we are exceedingly fortunate Mr. Tingley that we are relieved from taking our proportion of fixed charges on the Gould Street plant. We really expected that would cost us a couple hundred thousand dollars.

Q. Won't that result in an increased power cost of $145,000 over 1926? A. Yes. The Gas Company figure shows 175. We are hoping to save 36 thousand of it.

Q. How do you reconcile 12% increase in power cost with reduced car mileage and alleged economies in operation? A. Reduced car mileage really increases our kilowatt rate.

Q. How? A. Because we have a certain cost proportioned to us, that has to be divided by the kilowatts we use. The more kilowatts we have while it reduces it in one way it increases in another.

Q. But if you are cutting down scervice of course you are not using as much power? A. No, you do not, but as I say the Gas Company has a certain fixed charge. Now the more power, kilowatts they produce, the less the cost per kilowatt hour is, because they do not add additional men in the power house. They put a little more coal in. The fixed charge is the same, and outside of the use of coal the costs are about the same, so when you increase your kilowatt hours you decrease your cost

per kilowatt hour, but if your kilowatt hours decrease it reversely increases your cost per kilowatt hours.

Q. With decreased car mileage isn't a wage saving affected? A. To some extent, yes.

Q. And that partly offsets a wage increase? A. It has this year, yes. That's one statement I made a while ago.

Q. Doesn't decreased mileage mean decreased power costs? A. Well I just explained decreased mileage might be less kilowatt hours used, and might increase the cost per kilowatt.

(The Chairman) But the total, Mr. Emmons?

(The Witness) The total might be less.

Q. Help decrease maintenance, doesn't it? A. To some extent, not much.

Q. It ought to decrease accident cost, doesn't it? A. Unfortunately the accident cost has gone up to such an extent that I can't see any decrease in that.

Q. What do you think accounts for it? A. Our accident for 10,000 miles are runing just about as they have. The great number of automobiles, however, is causing a tendency to more accidents, and the jury verdicts have been heavier than they have before.

Q. Why? A. Because of the cost of living, I think.

Q. You don't think it's at all due to the unpopularity of the Company's application for increased fare? A. I don't think so, because that began before we made an application for increased fare.

Q. You don't think that the increased number of accidents is caused by the skip-stop plan of operation? A. No, our rate of accidents has increased almost nothing. I will give you the figures per 10,000 car miles from 1919 to date.

In 1919, we had 4.4 accidents for 10,000 car miles; 1920, 3.6; 1921, 3.1; 1922, we reached our minimum in this list 2.8; 1923, was 2.9; 1924, it held the same, 2.9; 1925, 2.9; 1926, 3.2; 1927, 3, so I think we are holding very well in

spite of the increased number of automobiles we have to contend with. That has a tendency to make our accident ratio run up.

Q. Turning to Exhibit No. 24? A. Yes.

Q. Exhibit No. 2-A, estimated passenger decrease for the first ten months of the year at 2.51% doesn't it? A. I think that's right, yes, without looking over it.

Q. Dosen't the estimate in this exhibit amount to 2.57%? That's the ratio of the 219 million to the 255 million? A. I would have to check that up. They are presumed to tally.

Q. They ought to tally, oughtn't they? A. They ought to tally.

Q. That's $5,578,000 would be equivalent to a 7.1% return, wouldn't it Mr. Emmons? A. On $78,100,000?

Q. Yes, sir? A. It's about 7%.

Q. A little over that? A. A little over 7%.

Q. The $2,200,000 estimated for depreciation was arrived at by applying a percentage which was found by Mr. Hill to the reproduction cost of depreciable property, wasn't it? A. No, this percentage—Mr. Hill will testify in detail as to the depreciation item. I have, however, gone over it with Mr. Hill and feel his work has been very well worked out, and I have checked myself with depreciation items of other places, so that I feel this $2,200,000 is a correct figure.

Q. You think it would be best to cross-examine Mr. Hill rather than you on this question? A. For the detail it might, for the general purposes no.

Q. Isn't the allowance of $10,394,000 for operating expenses built up on 1927 costs, with adjustments for presumed additional power and accidents and wage costs? A. It is, yes.

Q. Wouldn't that indicate that no provision has been made for additional service in 1928? A. Well, that's contrary to Mr. Clark's question a while ago. If we are figuring the 5% decrease, why shouldn't we figure a 5% decrease in operating expenses? It would give more ser-

vice to the people than we are giving to the system by holding our present expenses, but this we do find, we just recently had a cordon count which we have every fall and we find that our evening peak is still going—our normal hours are falling off, so the difficulty of giving service even now in the evening peak we require more cars even with a less number of total passengers per day, we require more cars to meet the Commission's standard than we did before. The total passengers for the day are falling off, the peak load in the evening has come up.

Q. Mr. Emmons, I am going to ask you if you will furnish me with a list of the dates when the various economies listed in the schedule of economies were made effective? A. I can do that.

(Mr. Tingley) Thank you. That's all.

NOTE: The Commission then adjourned for the purpose of taking a short recess.

AFTER SHORT RECESS.

CROSS-EXAMINATION (CONT'D.)

By Mr. Clark:

Q. Mr. Emmons, I think you said that it was only a question of time when ten cents would be just as popular in general as the five-cent fare? A. I didn't say popular, Mr. Clark. I wish I could.

Q. Just as common and general? A. Yes, that's right.

Q. How long have you thought that? A. Well, I should say I have been thinking that for the last couple of years. We are coming to it.

Q. Did you think that at the time you left Boston? A. No, I can't say that I brought a ten cent complex down here from Boston, as I have been accused.

Q. Then this opinion of yours just now doesn't mean that you are possessed of that complex? A. No, it does

not. I am sorry that the thing is here, but it is Mr. Clark.

Q. Why do you think that the ten cent fare will be just as general as the five cent fare once was? A. Because I think it is going to be necessary to maintain the street railway operation in the various cities. I think all companies are going to have the return that the ten cent fare will give in order to get capital that will keep up with conditions, and in order to pay the expenses they will have to pay.

Q. What outside of increased costs of construction and operation would bring about that result? What outside of the increased cost of construction and the increased cost of operation would cause you to form that conclusion, that all fares will eventually be ten cents? A. We need it now and I think other companies need it now, but they simply have gotten to the point of getting it.

Q. Is that your own belief for that conclusion? A. I think that's the reason, because they need it and have to have it.

(Mr. Toole) They want it.

(The Witness) It isn't a matter of wanting it, they need it, Mr. Toole.

Q. It isn't a mater of any extraordinary change in economic conditions? A. Not any extraordinary change. I think we are not thru with the decline of revenue due to the automobile.

Q. We will come to that automobile after a while. We won't forget it. Why do you think that the operators of our electric railways are going to go out for the ten cent fare and make it general in the future, when they haven't done it in the past ten years? A. Because I think they are all being affected the way we are.

Q. Have you an organization? A. What kind do you mean?

Q. There is an electric railway association, isn't it? A. The railway industry has an organization called the American Electric Association.

Q. And the United is a member of that organization? A. We are.

Q. And you have representatives attending the meeting of that organization? A. We do.

Q. And you discuss these subjects in the meetings of that organization? A. We do.

Q. When did you have your last meeting? A. In Cleveland, in October.

Q. Was it discussed at that time? A. Was what discussed?

Q. Was the effort to go out for a return similar to the return of the Gas and Electric lines, for example of a ten cent fare discussed? A. I wasn't at the meeting. Unfortunately, I couldn't go.

Q. Who did go representing your organization? A. Several of our representatives. Mr. Samuel Emmons, Mr. Wennagle, General Superintendent of Power, Mr. Wysor, Chief Engineer, and Mr. A. T. Clark, Superintendent of equipment.

Q. Do they report to you the proceedings when they return? A. We have a meeting after they returned so that every member of our staff could get from them everything they got at the convention, that would be of advantage to the Company.

Q. Did they report that the matter of increased fares was discussed at that meeting? A. They did not.

Q. You mean they did not report the discussion of increased fares? A. No, now you see they would go to sectional meetings and might not be at a meeting at which that was discussed if it was. I don't know that it was. You understand, Mr. Clark, there is what you call the Parent Association, the American Electric Railway Association. Then they have a Transportation and Traffic Association, and they have an engineering association, they have a claim association, they have an accountant's association, and these different men go to these different associations, and sometimes when there is something going on at one there is something going on at another,

so that even that number of men at a convention couldn't cover it all.

Q. But they have their general sessions? A. They have their general sessions, yes.

Q. And any matters of general interest such as rates would be discussed or considered at the general session, wouldn't it? A. It might not. It might be discussed at the Accountant's Asso. Session, I do not know of any discussion to that end. There may have been.

Q. Don't you think Mr. Emmons if the status of the Electric Railways Association compared with Gas and Electric and Telephone and so on, was not enjoying anything like the return that was enjoyed by these other utilities, that would be a matter of general interest to the American Electric Railway Association, and that it would be discussed at their general meeting? A. It might be a matter of general interest and yet might not be discussed. They may have other things they would rather discuss than that.

Q. Anything so important as that? If it was not discussed wouldn't it indicate that it was not of sufficient importance to discuss? A. Not at all, no. Some things as important as that are not discussed in an open meeting.

Q. Then when you say that the ten cent fare will eventuallly be just as general as the five cent fare you are expressing your individual opinion, aren't you? A. That is all, yes.

Q. Now, you have testified that you have received ten complaints. I just don't remember what those complaints concerned? A. Complaints concerning car service during this period when so much has been said in the papers about our reduction of car service. Two complaints came thru the Commission, one complaint was thru the Baltimore Sun, seven complaints came direct to the office.

Q. Do you judge the public's satisfaction with your service by the number of complaints you receive? A. We generally get complaints when they are dissatisfied.

Q. And if you don't get complaints you conclude the public is satisfied with the service is that it? A. No, that doesn't follow, because we are not satisfied ourselves, if our checks show that we are not taking care of the service.

Q. Now, I am going to return for a minute to a matter that I spoke of earlier and probably I should have waited until now, but I want to ask you another question or two about it at this time. You have estimated the net of 1927, I think, at $424,388? A. Yes.

Q. Upon I think 2.51 reduction in passenger revenue, is that correct? A. 3.21 for the rest of the year.

Q. Now, that is about, in round figures a 50% reduction of the net, more than a 50% reduction of the net of 1926, isn't it? A. Yes, it is.

Q. On a 2.51 reduction in passenger revenue, explain that, will you please? A. Well, that means if you lose $400,000 in passenger revenue it is impossible to save all that thru your operations. As I made the statement here we figure if we had a 3.21 loss in passengers we probably could save 1% in operating expenses, but the fact was in September we were a little bit more than last year in operating expenses; while we lost $40,000 in gross revenue, we also lost more than $40,000 in operating expenses.

Q. I don't know whether you understand the significance of the question. There is a reduction of, we will say, two and a half per cent., using round figures in revenue passengers? A. Say $400,000 for the year.

Q. And a reduction of more than 50% in the net income, how do you account for—— A. You have to put that in dollars. You can't compare those two percentages. You can't think for a minute that you could only have two and a half per cent. reduction in passengers and only have a two and a half per cent. reduction in net income.

Q. But there is a big reduction in 2½ and 50? A. No, you take the dollar mark, 2½% on $16,000,000 is $400,000 and 50% of $800,000 is $400,000.

Q. In 1927, say you will earn $424,388? A. Yes.

Q. Which is over 50% reduction in the net income? A. You will remember there is $31,000 of that is sticking out in three items, accident, power and expenses.

Q. Is that the way you account for it? A. That's part of it. It's $300,000 of the——

Q. Suppose you had an increase of 2.51 in passenger revenue, would that mean a 50% increase in income? A. No, it wouldn't.

Q. It works one way, but it doesn't work the other? A. It doesn't work together at all. If you could hold 2.51 increase in revenue passengers, or a gross of $400,000 increase in earnings, and confine ourselves to the Commission's standard without increase in expenses, it would mean a net increase of that much, but that isn't the way it goes.

Q. Does the fact that the capital costs, go on just the same and gradually increase notwithstanding an increase in revenue passengers, have anything to do with that variation in net income, due to that small decrease in revenue passengers? A. You can't change your capital costs as your passengers change. I can't get just quite what you mean.

Q. Your capital costs goes on irrespective of the amount of business you do? A. You can't help that.

Q. Isn't that largely responsible for this large variation? A. No. That keeps just the same. I can't see how that can be tagged as being responsible for it. In fact it was felt in the previous case our ratio of capital costs today are considerably under our ratio of capital costs ten years ago.

Q. Assume there is a 5% reduction in business this year and next year and a corresponding reduction next year, and your operating costs increase and your capital costs increase. What's going to be the result? A. There would be a catastrophe if that would be so.

Q. You would be headed for the rocks, wouldn't you? A. I call that a catastrophe.

Q. That is the sort of case that you have presented so far, and I understand the way you are going to meet that is to increase your fare to a ten cent fare? A. We feel it should be done.

Q. Are you confronted enough with the results of that increase to take those chances? A. From the studies that we have made of other places and the testimony I gave in the previous case, I do not think a fare increase has any material effect in the riding. We have, however, figured a possible 2% loss on that change from 7½ cents to 10 cents.

Q. Why is it you are asking for 2½ cents increase now under present economic conditions, compared with the last year, when previous applications have only been for half a cent? A. We never really covered the expenses we should have covered. The previous applications were too low.

Q. Does that represent a change in the policy of the company? A. No, it simply represents a loss of some hope that we had that we were reaching somewhere the turning point of an increasing business.

Q. Wasn't it your opinion that once a ten cent fare in Baltimore City wasn't in the cloth? A. I never said such a thing. I never had that opinion.

Q. Didn't Mr. France say so? A. I don't think he did. You read something he said the other day.

(Mr. Tingley) It wasn't that.

(The Witness) No. He said he wouldn't expect to get a rate of return and he had in mind the rate of return on the amount we were setting up in the valuation case, which was $110,000,000.

Q. Well, probably when he spoke of cloth, he didn't just have that in mind, as I think you will find it in the record. A. Mr. Tingley read the record the other day.

Q. Well, so have I and probably that's so, but haven't you ever heard him say or anyone in your company say that a ten cent fare in Baltimore City simply wasn't in the cloth? A. I have never heard anyone say that.

Q. You think it is? A. I certainly do, or I wouldn't be asking for it.

Q. Now, Mr. Emmons, I think you said there was a 17% increase to charges to accidents and damages in 1927, is that correct? A. Up to date, yes.

Q. And I think you have explained that the juries are giving larger verdicts and probably consistent with their idea of the increased cost of living of something like that? A. That may be part of the reason, I am not sure.

Q. Can you think of any other? A. I know your reason, I think.

Q. Well, what is my reason? A. You think it's a dislike of the company because of asking for a fare increase.

Q. Well, I won't comment on that. Mr. Emmons, isn't there and hasn't there been for some time in your organization a bureau or department of safety or something like that? A. We have a safety department.

Q. And, of course, it takes money to maintain that department? A. It does.

Q. They are very successful, aren't they? A. We think they have done good work in reducing this accident per car mile from 4.4 in 1920 to 3.0 in 1927. We think that's good work.

Q. Reduction of the accident per car mile? A. The accidents per 10,000 car miles have been reduced from 4.4 to 3. Accidents per 10,000 car mile operated, and that's in spite of the increase in the number of automobiles on the streets.

Q. And notwithstanding that decrease in the number of accidents per thousand car miles, the charges to accidents and damages have increased 17%? A. Over last year, but now listen, in that time the charges for accidents, have not gone up that much. We were at that time, when we had 4.4 accidents per thousand per ten thousand car miles, we were setting up 4½% of our gross. I am not asking 4½% of the gross now.

Q. You are not setting up 4½%? A. We are not setting up enough.

Q. What are you setting up now? A. Three and a quarter.

Q. Have you an accident reserve? A. We have very little accident reserve, not enough to cover accidents that are on the books.

Q. What is the amount of that accident reserve now? A. At the present time.

Q. Yes. A. As of August first it is $231,000. I haven't got it later. We had $302,000 when we began the year and we set up 3¼%.

Q. 3¼% of what? A. Of our gross earnings. In seven months we had lost of our reserve $70,000 at the rate of $10,000 a month.

Q. How many months? A. In seven months we lost $70,000 of our reserve or at the rate of $10,000 a month.

Q. That would date from—— A. January 1st.

Q. That's about the time you conceived the idea of asking for an increase in fare, didn't you? A. We did not.

Q. You did not? A. We did not.

Q. In January? A. In January. No, we didn't ask for an increased fare until August.

Q. I mean when you conceived the idea of asking for it? A. No, sir.

Q. When was it, February? A. No, sir.

Q. March? A. No, sir.

Q. When did you first begin to think of it? A. When our earnings began to go down in May and June.

Q. When was the application filed? A. August 1st.

(The Chairman) When you spoke of the percentage of your gross earnings, being set aside for your accidents, you referred to your gross income.

(The Witness) The gross revenue, yes.

(Commissioner Harper) When you say gross earnings, do you mean gross revenue?

(The Witness) Gross revenue, yes, sir.

(Commissioner Harper) And not gross income?

(The Witness) No.

(Mr. Markell) Those figures are shown in People's Counsel Exhibit No. 17.

(The Witness) We set up for instance 3¼% of the 16 million.

(Commissioner Harper) Mr. Emmons, what is the approximate average number of car miles operated on a day other than Saturday and Sunday?

(The Witness) About 100,000.

Q. Now, Mr. Emmons, aren't there other safety agencies now functioning in Baltimore of recent origin that would affect the accidents or the number of accidents? A. The Baltimore Safety Council of which we are members and with which we co-operate.

Q. Aren't they more active now than they have been? A. Not any more than they have been for the last several years.

They have as the head of their safety movement Truitt, who was the head of our safety department.

Q. Haven't they on now a program, a thorough and a more aggressive program? A. Just at the moment the Automobile Association have undertaken to avoid accidents to automobiles by asking people to get them inspected. We have made our garage an inspection place. If you will take your car in there, we will find out whether the brakes are good, whether the headlights are all right, and give you a yellow ticket if you are right.

Q. What percentage of these accidents we have been speaking of are automobile accidents? A. They are very large. It is very interesting if you will take a moment to see the change between vehicular accidents and automobile accidents in the last few years.

(Mr. Howard) You don't count the automobile as a vehicles?

(The Witness) No, we count the horse-drawn vehicle as a vehicle.

(Mr. Markell) An automobile is a projectile.

(The Witness) For example, one of the important factors in connection with the accident situation at the present time, is the automobile accidents. About ten years ago the most prevailing type of accident was the boarding and lighting accident. About this time the company began the use of the closed type of car, superseding the open cross summer car. In 1917, $119,284 or 33% of our expenditures for accident settlements were for boarding and lighting accidents. This percentage has been gradually reduced until 1926, the percentage for this type of accident show 16% of $73,547. However, the increased use of the automobile today—since that time resulting in increased automobile accidents has taken the place of the boarding and lighting accidents, as the most expensive with which we have to deal. At the time we were paying 33% of the accident expenditures for the boarding and lighting accidents, the automobile accidents was costing only 8%, or $29,977, and as the boarding and lighting cost gradually decreased the automobile cost gradually increased, until in 1926 it had reached 24% of the accident expenditure of $106,833. Just going up that way.

Further, as an example of the extent to which the automobile accident enters into the claim cost it is interesting to note that in 1917, the total cost for vehicle accidents of all kinds was $64,000. Of this amount $34,000 was charged to horse-drawn vehicles and $30,000 to motor vehicles. The cost of horse drawn vehicles was gradually decreased until in 1926, the total cost for this type of accident was $7,063, while motor vehicle accidents cost $106,833.

Does that answer your question?

Q. So that the percentage is about what? A. 24% of our accident costs are automobile accidents.

(Mr. Tingley) What's the percentage of pedestrian, Mr. Emmons, just as a matter of curiosity?

(The Witness) I don't know that I have that.

(Mr. Tingley) Mr. Nodder says that he has it.

(The Witness) It would be interesting to know right at this juncture.

Q. Have you or not stated that you expect an increase in these charges? A. We are having an increase.

Q. A further increase? A. We expect that increase to continue. We are not asking for any more than the increased rates at the present time. We hope it will not continue above that.

Q. To what extent do you expect it to continue? A. We are asking for this $10,000 a month. We expect to try to hold that and we are not asking for anything further. We didn't increase next year's expenditures any more than the $120,000 that we see we need this year.

Q. Is that or not an expense or an increase that can be foregone for the present? A. I wish it could be. I do not see how it can.

For the purpose of the record, in answer to Mr. Tingley's question, Mr. Nodder's record shows that in 1926 the number of pedestrians struck by car were 227 out of all total accident reports of 4,374, or about 5%, and the claims paid were $31,018 out of a total of $387,405, or about 7%.

(Examination suspended.)

NOTE: At 4.05 o'clock P. M. the Commission then adjourned until Tuesday, November 1st, 1927, at 10 o'clock A. M.

EIGHTH DAY.

Thereupon—

C. D. EMMONS,

a witness of lawful age, produced on behalf of the Applicant, having heretofore been duly sworn, according to law, and whose examination was suspended for the purpose of adjournment, resumed the stand, was examined and testified as follows:

CROSS-EXAMINATION (Continued).

By Mr. Clark:

Q. Mr. Emmons, look at Ex. No. 1-A? A. Yes.

Q. Mr. Emmons, this exhibit indicates a falling off in passenger revenue for 1927 to October 1st, of 2.80%, under 1926, doesn't it? A. To October 1st is 2.75 and including approximate October is 2.80.

Q. Yes? A. That is using 2.31 for October. The preliminary figures which I received this morning, show 3.3 for October which will raise that 2.80 a little bit.

Q. What was the corresponding decrease in car miles, that is for the same period of 1927 under 1926? A. I can give it to you approximately. It will be for the first nine months compared to the first nine months of last year The car miles decreased in the first nine months of 1927 over the first nine months of 1926, 2.93. Seat miles, which we are now measuring because of the change in the type of car, has decreased 2.18.

Q. Then for this period car miles decreased at a greater percentage than passenger revenue, did it not? A. Almost identically the same. There is hardly any difference, and seat miles not so much.

Q. The percentage however of car miles was a fraction greater? A. 2.93 in car miles against which will probably be 2.82 or something like that, but seat miles you must remember is also measured which is 2.18.

Q. Why did you make that reduction in car miles? A.

In order to meet the conditions of traffic as presented to us.

Q. Is that the policy of your company? A. If traffic changes we always have. Always have.

Q. Why is it then in Exhibit No. 22 you estimated a decrease of 5% in passengers, but no decrease whatever in car miles operated? A. For the reason we have cut as far as we should cut, as far as normal service is concerned, and the peak hour service, which is really the expensive service, the peak hour traffic is increasing, so that the condition today has gotten very different from the condition a few years ago. It used to be if you had a 4% decrease in passengers it was likely a decrease spread thru the day, but the automobile has made that change to the extent that a decrease in passengers like that is in the normal hours, and there is actually an increase in passengers in the peak hours.

Q. Why would there be any difference between this year and next year in that respect? A. There probably will be just the same difference, but that's one reason why we have been trying to work our way out. We do not feel we should cut our service any more. That's the reason we put our operating expenses in as the same.

Q. What do you mean by trying to work your way out? A. We mean that since the fare case of 1924, at which time we promised the Commission we would try to work out on the 8-7½c fare we have been continuously trying to do it.

Q. Do you mean by that that a reduction in car miles corresponding with a reduction in passengers from month to month is not the policy of your company? A. It has been, and I say we have been trying to work our way out, but as I said in my previous testimony, I believe Baltimore should be able to have a service and be willing to pay for a service that would give a minimum of not more than ten minutes on any line in the city. We have some lines that are 12 minutes in the normal hours and some that are 15. We feel they are entitled to better service, but we haven't the money to give it.

I want to say this, that the service that we give meets

the Commission requirements, and in many cases more than meets the Commission's requiremens.

Q. Then would you not modify your Exhibit No. 22, decreasing car miles operated to conform with the decrease in passengers? A. No, I wouldn't, because there is not only the question of car miles there, but a question of maintenance of property. The last two years we have held our maintenance cost down to the very rock bottom. We feel we should have a little more liberal allowance there. We feel that we ought to hold the expense at least to what we have been given this year.

Q. Is it good railroading to reduce car miles from month to month as the passengers fluctuate, irrespective of cost? A. Why, certainly. It is just like the man in ordinary business. When he finds his business going he will reduce his expenses if he can.

Q. What is the unit of service furnished by a railroad company? A. Well, it's called car miles sometimes, and now it's getting to be seat miles. When you change the type of a car so that you give double the seats than you did formerly, it means you give better service, or if you have a reduction of car miles, you will still be giving as good service.

Q. But generally speaking, car miles with that seat mile exception, car miles is the unit of service corresponding with the thousand cubic feet in a gas company? A. The measure has been that.

Q. Or the kilowatt hours in an electric company? A. Yes.

(The Chairman) When you change your standard from car miles to seat miles, because of your changing character of equipment, and you put a greater number of seats in a unit——

(The Witness) Yes.

(The Chairman) If you measure that by seat miles doesn't it result in fewer cars being run on the tracks, and although they may be larger cars does it not mean that there will be greater headway between the cars?

The cars will be farther apart and people will have to wait longer for a car although you may get more passengers in a car?

(The Witness) That would be right if that were true all during the day. Largely these increased seat cars are on the peak hours, so that it may be a reduction from say a minute headway to a minute and a quarter or something like that.

Q. Mr. Emmons, let me understand you thoroughly right there. In changing the carrying capacity to conform to fluctuations in traffic is it your idea to furnish cars or seats? A. We measure both, Mr. Clark. Cars really mean headway, car miles, and we measure that way. At the same time we measure seat miles, so when it comes to the rush hour, when seats furnished or capacity furnished is of prime importance we use the seat mile measurements. When it comes to normal hours when headway is of prime importance we have the car mile measurement.

Q. Now this decrease in passenger revenue is due of course to a decrease in revenue passengers as shown on Exhibit No. 2, isn't it? A. Yes, they go together.

Q. Now, Mr. Emmons, wasn't there an annual increase in revenue passengers from the very time of the consolidation of the Baltimore companies in 1899 to and including 1920? A. Our Exhibit No. 11 in the previous case shows that.

Q. You mean the emergency case? A. In the preliminary case or the emergency case.

Q. Yes. So that the passengers just gradually increased for a period of twenty years right up to 1920, including 1920. Now 1920 marked the peak of revenue passengers as this study indicates.

Now, Mr. Emmons, I want you please to give me, as briefly as possible, your reasons for this sudden turn downward in the number of passengers carried by your company. Now we have heard references to it from time to time during the proceedings, but I want to get them in one, two, three order; your reasons for this sud-

den turn downward in 1920? A. There is only one big reason. If you have Exhibit No. 11 before you, you will see it shown thereon. That is the question of the growth of the automobile. In 1919 there were about 80,000 automobiles registered in the State of Maryland.

Q. I have heard that and the Commission has, too. I don't want you to repeat that unless you insist on it or the Commission wants it. A. That is the thing to repeat and keep repeating, Mr. Clark, if you want to know what has become of the passengers of the United Railways and other street railways in the United States.

Q. I am asking you now for the reasons, and the private automobile you give as the chief reason? A. The chief and greatest reason.

Q. Now what other? A. That is the only real reason of the continuous decrease in passengers.

Q. Would you say increased fares had nothing to do with it? A. I say no. I gave you record after record where I showed increased fares had very little or no material effect on the question of the riding habits of different cities.

Q. Very little or none. Now just what do you mean? A. I say very little or none. That means almost none. I can't say there is none because there is some, but it is very little.

Q. Any other reasons? A. You might say business depressions, but that's very little, and if there is any business depression now I am sure we get no comfort out of it, because all indications are they will be no better. We are going into a Presidential year next year and business is never good at that time.

Q. Change in headways have nothing to do with it? A. Very little. It might some. That's the reason I say we ought to be in a position and have money enough to give a ten-minute headway.

Q. I will came to that after awhile. Mr. Emmons, how do you reconcile your conclusion now as to automobiles; that the private auto is the cause of your 30,000,000 passenger loss since 1920 with the fact that in Philadelphia

the number of passengers has grown without a setback during this period? A. I think you are mistaken.

Q. I think not. A. I think you are.

Q. Have you the figures there? A. I have not, but I am quite sure you are mistaken. And remember, Mr. Clark, in that 30,000,000 there is 10,000,000 to 12,000,000 due to loss of fare zone extensions also.

Q. Have you any study there showing total passengers during this period from 1920 to the present time? A. I have the numbers, yes. It's on some of the exhibits, too.

Q. That isn't on Exhibit No. 11, is it? A. Yes, it is, revenue passengers up in the left-hand corner.

Q. I mean total passengers. Have you the total passengers for the corresponding period? A. You mean including transfers and everything?

Q. Yes. A. No, I don't think I have a figure of that kind.

Q. What has been the fluctuation in total passengers comparing them with the revenue passengers? A. It would correspond to the same percentage, I presume.

Q. Now, then, I am reading from page 11 of the 1926 report of the Philadelphia Rapid Transit Company:

"In 1920, 908,000,000 passengers."

Now that was an extraordinary year for economic reasons all over the country. In all the reports 1920 seems to stand alone. Now then:

"1921, 836,000,000," and then "1922, 848,000,000; 1923, 918,000,000," and "1924 it fell back a little, 913,000,000; 1925, 926,000,000, 1926, 966,000,000," a jump of 40,000,000 passengers for 1926 over 1925. A. Do you know in that time the Frankfort Elevated was opened and new territory added to the revenue passengers there, and we also know that the bus passengers are included, busses going out in territories that never were served before. That all makes a difference.

Q. Let's see what difference that does make. What

difference does it make so far as the passengers carried are concerned whether they are carried on rails or on rubber? I mean public passengers now? A. It isn't that. It's a question of opening up new territory.

Q. I thought you said it is too expensive to open up new territory? A. It certainly is, but when they do open them up then they increase revenue passengers.

Q. Of course if there are more people to be carried then they will carry more, but what that has to do with the question of competition with the private auto—— A. A great deal.

Q. They are public riders aren't they? A. The private auto may take people there. If you go into a territory that has never been served you will certainly create additional passengers. If Baltimore would build an elevated line down toward Annapolis, a district we don't reach, and we would begin operating, we would get new revenue passengers too.

Q. In other words, that's just a way of saying that Philadelphia is a large city and they carry 966,000,000 passengers where we carry three hundred and some million. That's what you mean by that? A. No. All I mean is this; that the development of a city, extension of lines or additional of territory through bus service will naturally increase the number of revenue passengers.

Q. Wouldn't private cars compete just as much with busses as they would with street cars? A. They do, yes.

Q. You know that in Philadelphia the Rapid Transit operated their busses at a deficit and are still doing it? A. I understand they lost several hundred thousand dollars last year through busses, but however the revenue passengers show in that total.

Q. Exactly, but I am talking about now the passengers that are carried in public conveyances like busses and street cars as compared with passengers carried or with people who ride in private automobiles. In the City of Philadelphia the passengers carried by the Philadelphia Rapid Transit Company busses and cars has gone ahead each year? A. No, not each year.

Q. Well a setback of five million one year, but has gone ahead about 100,000,000 since 1920? A. Your arithmetic is pretty bad, because 908 from 960 is 52,000,000.

Q. I was looking at 1919, but I want to call your attention to that and get the benefit of that in 1919? A. Another thing I forgot.

Q. Over 40,000,000 from 1919 to 1920 increase? A. I forgot the opening of the Camden Bridge which naturally brings a very, very large number of revenue passengers to the P. R. T. I don't think they are comparable at all, Mr. Clark.

Q. Is there any way for them to use private automobiles? A. They do, but when 75% of the people ride in public conveyances or busses, when you open new territory you are going to get 75% of that new territory, and the opening of the Camden Bridge and the opening of the Frankfort Elevated, and the extension of busses, even at a large loss, naturally boosts up revenue passengers. I can't see any comparison at all between Philadelphia and Baltimore.

Q. I don't think you want to. It's easy to see. You also get the additional competition don't you? A. To the extent of 25%, but if you get 75% of the riders you are better off as far as the total revenue passengers are concerned. You might lose money however getting that 75%.

Q. Then I understand your explanation of that is that new territory and new business opens up and therefore passengers increase? A. Yes.

Q. But that doesn't necessarily mean that the public conveyance passengers over the private automobile passengers increase? A. I think the same ratio holds for new territory or old, so if you go into a territory that has 100,000 people, 100,000 riders, you are likely to 75% of those during the period that the 100,000 would ride.

Q. Now then have you compared the passenger figures in other cities comparable to Baltimore? A. No, because while I know that they have gone down, and I can give you them if you want, I have got quite a lot of them, I

think they are not comparable at all, but if it's interesting, for our own information I have been getting information from other cities, and this city of Detroit for instance that is spoken of so much, during the month of August went back 8.44%. The City of Buffalo went back back 7.30%. The City of Philadelphia went back 5.6%. The City of Washington 2.15%. The City of St. Louis 2.73%. The City of Boston 1.63%. The City of Cleveland 3.43%.

Now I have the other months here and you will find the same thing. Here is the month of July. Detroit went back 12.03%. Philadelphia, your town that is going ahead so well, went back 8.69% in July. Boston went back 4.86%. Cleveland went back 7.38%. Washington went back 5.31%. St. Louis went back 5.27%. Pittsburg went back 3.78%.

Q. For what period? A. This is the month of July. I have June. They are all the same. June Detroit went back 12.18%. Philadelphia 7.55%. They are all getting the same thing that we are.

Q. And all due to automobiles? A. Largely due to automobiles.

Q. And not due to any existing economic condition? A. Very, very little.

Q. Now, Mr. Emmons, Mr. Kelker's traffic survey of Baltimore shows that revenue rides on your lines per capita of population grew from 254 rides in 1910 gradually up to 321 rides in 1920, but from 1920 to 1925 the annual rides per capita had dropped from 321 to 272. That's correct isn't it? A. That probable is correct. That is due to the automobile.

Q. Now you say that the automobile is the cause of that also? A. I think it is.

Q. That indicates a falling off in the riding habit doesn't it? A. Yes, but our riding habit still holds pretty well with other cities. I have had figures made for other places and I find that we fare very well with other places.

Q. What study if any have you made of the possible

saturation point of automobile use or competition? A. I am sorry I have to confess I am not able to find that saturation point. I wish I knew it.

(Mr. Tingley) It isn't even in sight is it, Mr. Emmons?

(The Witness) I am afraid not.

Q. People ride chiefly to and from the center of the city don't they in their automobiles? A. No I think not.

Q. Well street cars also? A. We are hauling somewhere between 75 and 80 per cent. of the people that come to the center of the city, but I would doubt very much whether we haul between 75 and 80% of the people who used to ride in comparison outside of the center of the city, visiting friends and things like that.

Q. But Mr. Emmons you know that chiefly the riding in Baltimore City either in street cars or automobiles is from the center of the city? A. Chiefly I would say yes.

Q. Now do you drive your car down town? A. No I don't drive my car down town.

Q. Does somebody drive it then? A. Usually, but I usually do work on the way down. I have met my manager and assistant manager at my house and we go out some place, observe traffic, see the work that is going on, visit car barns and generally do a half hour to an hour's work en route to the office.

Q. Have you heard of the difficulty now in getting parking space down town? A. You don't have to hear of it, you can see it.

Q. Don't you think there is a limit to parking capacity down town? A. Well there is a limit to that but there are new garages being built, new places being opened up. people are beginning to park further out and further out, so it's just a question of how far they are going before they stop parking. You see them parking up as far as the Belvedere Hotel.

Q. And that doesn't give you any idea of the saturation point? A. I am sorry I can't see it. I wish I could.

Q. Suppose I should tell you that a number of people

have told me recently that they have stopped driving their cars down town because they can't find parking space and frequently have to drive around fifteen, twenty and thirty minutes around and around before they can get a place to put their cars. Would you say that has anything to do with the saturation point being in view?

A. Well I wish it was enough to not have had a loss of over $3,000 yesterday. What I say is there may be a few isolated cases like that, but not enough to begin to make our revenue come back, Mr. Clark.

Q. You wouldn't want to venture any opinion at all on that would you? A. I wish I could. I would not want to know.

Q. Well when the time is reached that we simply can't find any more space on the surface of the streets or in garages to store our cars down town we will use street cars won't we? A. It might be, but this I think might be true even now as congested as it is. If you take an area the people will ride into and walk on down through it that you will find that it's perhaps not half filled today.

(Mr. Tingley) Don't a great many people who drive down town in automobiles park way up town and come down in street cars?

(The Witness) Some few, but that doesn't help our revenue so much. I noticed a man drive down Charles Street and stop and lock his car, and I said there is an all day parker, and he took one of the Charles Street Busses to come down town and he paid ten cents for his ride.

(Mr. Tingley) Ten cents for a comfortable ride.

(The Witness) No, he had to stand up because the bus was crowded.

Q. All right. I see we can't agree on the saturation question. We will probably have a witness on that question.

Now Mr. Emmons I want to ask you this question. Is the loss of passengers and the fear of continuous falling off in the future the only thing that brings you before the Commission at this time in an application asking for

an increase of 33 1-3 increase in fare? A. That compels us to come, but we have been showing, in every great case we have been in, we called attention to the fact that 5% of gross is not sufficient for depreciation allowance.

(Mr. Tingley) That was the basis originally suggested by the Company wasn't it Mr. Emmons?

(The Witness) I think that may be true. That is before my time with the Company, but every time we have had a rate case that has come up in that way.

Q. That falling off in passengers, this decrease of 2.80 in revenue passengers isn't the only thing that brings you to come before the Commission? A. That compels us to come before the Commission.

Q. What else does? A. That primarily compels us to come before the Commission, and with the compulsion of coming before the Commission we are developing the fact that we are not only short of depreciation but terrifically short on rate of return.

Q. Then the question of depreciation incidentally—— A. It's part of the case.

Q. Would you come before this Commission on the question of depreciation alone? A. Not alone, no.

Q. How about your return. A. The return is a part of this case. The question of return.

Q. But suppose you had no falling off in revenue passengers this year compared with last, you are taking the position that last year and the year before that and for many years back you haven't earned a fair return. Would that have brought you before the Commission at this time? A. Mr. Clark I think if we had been doing as well this year as we had last we would still have been trying to work our way out, as I said before, on the 8-7½ cent fare. We would not be here if the loss of revenue passengers had not effected us to such an extent that we are hardly making ends meet.

Q. In other words then the question of about a million and a half additional depreciation allowance that you are asking for and the question of return on value, they are secondary. You would not be before the Commission at

all now except for the fact that your passengers are declining and of course your revenue this year——

(Mr. Markell) What does that mean? Secondary?

(The Witness) Being compelled to come before the Commission there is nothing secondary in the case. There are three things. One is to get sufficient revenue to operate the property and maintain it in proper shape, the second is to get sufficient revenue to give us a proper depreciation, the third is to give us sufficient revenue to give us a fair return. Now they are all a part of the case and one just as primary as the other, but as I said before, being forced to come over here because of the loss in passengers, one is just as important a part of the case as the other.

Q. But it was the loss of revenue that forced you to come before the Commission at this time. A. That forced us.

Q. You would have not come before the Commission on your depreciation plea or on your return plea?

(The Chairman) Mr. Emmons has said it two or three times.

(The Witness) I say the loss of passengers forced us to come over to get sufficient money to operate the property.

Q. All right. Then you would not have come in on the depreciation claim or on the return claim if it hadn't been a loss this year in passengers? A. I might qualify that by saying not at this time. If we were making as good as we were last year we probably would not be here at this time.

Q. Now Mr. Emmons the allowance for depreciation now is 5% of gross? A. Yes, sir.

Q. And that has been so for how many years? A. I don't know when it started. I know it was in effect in 1919.

Q. When you came with the Company. And that 5% was fixed by the Commission? A. I wouldn't say it was

fixed by the Commission. It was allowed by the Commission.

Q. Approved by the Commission? A. Yes. I might say that it wasn't upon the question to raise it. We were not permitted to raise it by the Commission. On a question to raise the amount of the allowance we were not permitted to raise it by the Commission.

Q. What do you mean by that? A. I mean that every rate case we showed that 5% of the gross receipts was not sufficient to cover depreciation, but in every rate case also the Commission finally figured their basis on the basis of a 5% allowance.

Q. Now Mr. Emmons don't you know that you never suggested inadequate allowance for depreciation to this Commission until Mr. Zimmerman worked that out in the 1919 case? A. That's when the suggestion began.

Q. And never before that had you mentioned inadequate depreciation allowance to this Commission? A. I wasn't here. They only had one rate case before that. In fact that was the first rate case, Mr. Clark.

Q. You are familiar with the attitude the Commission took in that matter then, aren't you? A. 5% of the gross was the allowance given us.

Q. Now in 1926, you reconstructed 15.2 miles of track, didn't you? A. I think that's right.

Q. That's about the normal in order to keep up with current replacement needs, isn't it? A. No, I think our average shows 17½, and my testimony always has been we should have sufficient to replace 20 miles out of 433 miles of track.

Q. In past cases before this Commission, haven't 16 miles been used as the normal trackage to be replaced? A. I think you will notice my testimony has usually said 20 miles is what we should have.

Q. Well the average over the past eight years is 16.5 miles? A. Mr. Hill will develop that in his testimony. I think you will find it 17½.

Q. Well, I have taken your figures since 1919 and I

find it 16.5? A. You have taken reconstruction. You perhaps haven't taken retirements. There has been certain track that's been taken up and retired. You have to provide for retirements as well as reconstruction, Mr. Clark.

Q. No. I am taking your 131.8 miles of track? A. Reconstructed.

Q. Reconstructed, yes? A. And at the same time there is other track actually taken up, and I say your depreciation reserve has to provide not only for the reconstruction of that track but for the retirement of track.

Q. Then that would raise that from 16½ to 17 something? A. I say Mr. Hill will develop that.

Q. You don't object to being cross-examined on the depreciation question at this time, do you? A. Oh, no, excepting when you get to the detail Mr. Hill has given that more time and thought than myself, and I will ask you to save the questions for him.

Q. Are you keeping up with replacement needs? A. We are keeping up as far as safety is required. I don't feel we are as far as comfortable riding is required.

Q. Is your road bed in normal condition today? A. I think we are in 85% condition as the Commission gave us.

(Mr. Tingley) Is it in the 90% condition that the Company claimed in the valuation case?

(The Witness) I wouldn't be surprised, but I think we could find a 90% condition if we went and studied it, but I think we are at least in the 85% condition that the Commission gave us.

Q. In your report of 1926 to the stockholders you say 131.8 miles reconstructed in the past 8 years is nearly one-half of all the tracks in the City streets under frequent service. A. I think that statement is right.

Q. Now I have taken from your reports an allowance for the past eight years. I find the average annual allowance to be $817,595. That's about right, isn't it? A. For depreciation?

Q. Allowance charged to depreciation. I am not talking about now the retirements. I am talking about the 5% of the gross? A. I guess that's right, yes.

Q. About $817,595. That equates about $4,962 per mile of track. That's pretty low, isn't it?

(Mr. Howard) Per mile of track owned you mean?

(Mr. Clark) No, per mile of track reconstructed.

(The Witness) For depreciation? Oh, you are trying to get the cost per mile of track?

Q. Yes, reconstructed.

(Mr. Howard) Not on the theory that the track is the only thing concerned.

Mr. Clark) Oh, no. The road bed and structures is all that's involved in that item, isn't it?

(Mr. Markell) This is depreciation for the whole system.

(Mr. Clark) Yes, I know.

Q. (By Mr. Clark) Now in the past eight years, the allowances which have been made under the 5% rule have enabled you to accumulate a reserve of about a million and a half, that's correct, isn't it? A. A little over a million.

Q. It's about a million and a half, isn't it? $1,500,000 and some thousand? A. I will give that to you. Yes. January 1st, $1,151,000 at the present time, having held down expenditures this year in order to try to keep ourselves in a proper financial condition, we have saved out of the allowance set up, $264,000, so the present balance is $1,415,000. The first of the year, however, it was $1,151,000, Mr. Clark.

(Mr. Chairman) That's your reserve for depreciation.

(The Witness) Yes. That's accumulated in about 15 years.

(Commissioner Harper) When did you say you saved that $264,000?

(The Witness) During the present year. We have just been not able to do the work.

Q. You have here at the end of 1926 reported an accumulation of $1,520,000 depreciation of road and equipment, provision $9,999,000 expended $8,479,000, leaving a balance or an accumulation of $1,520,000 as of December 31st, 1926? A. That's correct. I notice I have read the wrong figure here. That's correct. The present balance is $1,415,390.

Q. Then the 5% of gross revenue has more than taken care of the normal current replacements, hasn't it? A. It has not, because we haven't retired any cars and we burnt up and excluded from the valuation a lot of cars at a reproduction cost of over $3,000,000.

Q. Mr. Emmons, how many cars did you burn up? A. Some 300. 329, I think.

Q. What entry was made of that loss? A. We are carrying them as unamortised loss here.

Q. Carrying it as an unadjusted account? A. Yes, they are under property abandoned to be amortised. Original cost shown as $1,076,000.

Q. When was that entry made? A. The first of the year when Haskins and Sells went over the books they put that entry down.

Q. Is that where that entry belongs? A. They are bookkeepers, I am not, and that's where they said it belonged.

Q. You burn up a lot of cars and then make an entry in the unadjusted account. You don't know where to put it, do you? A. We had to. If we had it in the depreciation reserve we would have taken it out of the depreciation reserve and used it, but we hadn't it. Certainly that's the place it ought to have gone. $1,076,000.

Q. You did have that in the depreciation reserve? A. But that would have taken out all we had.

Q. That's just a bookkeeping entry anyway, isn't it? A. Then we would have had nothing in the depreciation reserve.

Q. If you are carrying in the unadjusted account something that belongs to depreciation, in other words property charged against depreciation you are not fooling anybody by carrying it in the unadjusted accounts? A. There is no attempt to fool anybody. It shows it in the report there.

Q. But on its face it belongs as a charge to depreciation? A. We think it ought to be amortized.

Q. Are you sure now that it is properly a charge to depreciation? A. I am sure it is.

Q. Wasn't there some doubt about it because you charged it into unadjusted accounts? A. Not a bit.

Q. I don't know all the facts? A. You ought to.

Q. You didn't have to have the money? A. We should have had the money.

(The Chairman) They weren't in the valuation at all.

(The Witness) They were taken out of the valuation, Mr. Chairman. The same way we had some miles of track that had not been used that we took out of the valuation. We had some old car barns that were not being used that we took out of the valuation.

(Mr. Clark) Mr. Emmons injected that burnt car business. It is very important in this case that this Company is able to take care of more than current replacements.

(Mr. Howard) It's been shown that it isn't.

(The Chairman) Don't let us go into that. I don't think it has any bearing on the case at all.

(Mr. Clark) What hasn't?

(The Chairman) These burnt up cars.

(Mr. Clark) I don't think so either.

Q. (By Mr. Clark) Now, Mr. Emmons, look at Exhibit No. 16, will you? From this exhibit I understand that prior to 1924 you were using book costs for retiring property, and beginning with 1924 you have used

Commission valuation figures, that's correct, isn't it? A. No, that is not correct.

Q. What is correct then? A. We feel we should use the Commission valuation figures. It hasn't been finally settled. We have still been going on the rules of the Commission retiring at book cost.

Q. Oh, you are still retiring according to book costs and not valuation Commission figures? A. The valuation is not entirely completed yet. There is no question but that valuation figures is the proper figure to use. To bring the valuation up to date we did use the valuation figure which is proper. On the books, however, the books are still kept the way they were previously kept.

(Mr. Tingley) The rules of the Commission require that?

(The Witness) Yes, the rules of the Commission require that.

Q. Did the rules of the Commission require book cost prior to the valuation? A. Prior to the valuation.

Q. What is the purpose of Exhibit No. 6C? A. The purpose of Exhibit No. 6C is to show that after bringing the valuation of 77,000,000 to date with additions and subtractions, and extending it forward to 1920, that our rate of return has been materially less than 6%.

Q. Why do you make that break between 1923 and 1924, using book cost up to and including 1923, and valuation prices or figures after 1923? Why is that break? I just don't see it. A. Well the valuation figures is taken and retired by book additions from 1920 to 1923, by book additions and book retirements.

Q. Yes, I understand that. A. We had no valuation of these various parts at that time.

Q. I know. A. But after 1924 we had the book additions and valuation retirements.

Q. Yes? A. Now the book additions are practically the same as the valuation retirements because they are present day costs.

(The Chairman) Valuation made as of January 1, 1924.

(Mr. Tingley) December 31st, 1923.

(The Chairman) The same thing. One day.

Q. But now then since the valuation you are still using book costs? A. No, this reads book additions and valuation retirements.

Q. You say rate base, years 1924 to 1926, inclusive, is at mid-year average for respective years as adjusted on $77,000,000 valuation by book additions and valuation retirements. Now what do you mean there by valuation retirements? A. Valuation retirements is the amount given in the valuation for those respective items that have been retired, and book additions is the actual cost of putting them in place.

Q. What figure then are you using now for retirements? Old book costs or valuation figures? A. The valuation figures.

(Mr. Howard) You mean in this exhibit, Mr. Clark?

(Mr. Clark) No, I am not talking about this exhibit.

(Mr. Howard) What are you talking about?

(Mr. Clark) What I said.

(Mr. Markell) What I said didn't have any meaning.

NOTE: Previous question and answer here re-read by reporter.

(Mr. Howard) Of course speaking of this exhibit?

(Mr. Clark) No, I am talking about his old book costs which are higher, I am informed, are higher than the prices used in the valuation or the valuation figures.

(The Witness) It's just the other way, Mr. Clark, and that's where the difficulty comes in.

Q. Were your book costs lower or higher than the Commission—— A. We had no definite book costs, but the original costs, as near as can be figured, are of course less than the reproduction cost of today.

This is gotten up, as I said, this is the book additions, which is the present day cost, less the valuation retirements, which also is the present day cost, so it keeps a balance in the valuation figure as of today. Now our difficulty has been, if that's what you are trying to get, our difficulty has been these retirements out of this depreciation fund have been made according to the original cost of the construction, and it has cost us twice as much to put it in, consequently this depreciation reserve used is only about one-half of the amount that was needed to replace what was put in in the place of it. That on the face of it shows the failure of a 5% gross depreciation reserve.

Q. Did you actually have on your books anywhere your original cost figures? A. No.

Q. Didn't you equate your capitalization over your plant in order to determine the retirement figure? A. We have not.

Q. You never did that? A. No.

Q. Just how did you ascertain the retirement figure? A. According to the rules of the Commission we take a piece of work and take its present day cost. We figure then just as carefully as we can what it cost originally. The rules of the Commission have been that all we could charge out of the depreciation reserve was the original cost and the difference between the original cost and the present day cost had to be capitalized.

Q. All right. Then you have been retiring at present day costs then? A. Why I just said the other thing.

Q. You said you took the original book cost and brought that up to present day cost? A. No, I said this. I will say it again. I said the rules of the Commission have been that all we could take out of the depreciation reserve as set up was the original cost of a piece of work.

Q. Yes. A. Now, so you will understand it let's take a piece of work that cost originally $50,000. It costs today $100,000. The Commission's rules have been that all we could take out of the depreciation reserve was the fifty thousand. The other fifty we had to capitalize.

Q. Oh, I understand that. A. Now we say that is all wrong and we have said it all the time, because that $50,000 additional is the necessary fund to replace the part of track or properties being worn out by the public at this time.

Q. I understand that. The difference between the retiring figure, if there is any, and any reconstruction figure is all charged to capital account. I understand that, but I asked you how you got at this original cost figure, and I understood you to say that you didn't have it but that you retired at present day costs? A. No, I didn't say that.

Q. Then how do you get your retiring figure? A. I just said a moment ago, and I wish you would get it this time, if you please, that we figure up just as carefully as we can what that piece of work would have cost at the time it was originally put in.

Q. Then that's a piece of guess work, isn't it? A. No, I wouldn't call that guess work. We have the figures of labor and the figures of materials. Say a piece of track was put in in 1902, we know what the rate of labor was, we know what material was. There is not much guess in what it really costs.

Q. Then you made the best effort you could get at the original cost? The rule being the original cost? A. That is right.

Q. And the difference between the original cost and the cost of reconstruction of course was charged to capital account. I have been familiar with that for some time too, but I was misled by your exhibit here into thinking that book additions were used prior to 1924, and valuation figures since 1924, and further from something that was said, I got the idea that you had equated the capitalization over your plant in such a way as to arrive at a retirement figure, which was greater than the valuation figure, and that's wrong? A. That would be true, if we did, but we haven't done that.

Q. How long has the United had a depreciation account for replacements, Mr. Emmons? You had none before the Commission existed did you? A. No, 1912.

Q. Since 1912? A. Yes.

Q. Now, Mr. Emmons, I think you have estimated, that what you are entitled to as a depreciation allowance is about $2,200,000? A. That is correct.

Q. In round figures that's about $1,400,000 per annum more than allowed now? A. That is correct.

Q. What would you do with this if you were allowed this additional $1,400,000? A. Why we have plenty of use for it. We will have.

Q. All right? A. It isn't a question of what we would do with it.

Q. Oh, yes, it is? A. It is a question of whether we are deserving to have it, and I think when Mr. Hill analyzes the thing, you will find out why we need it.

Q. No, it's a question of what we will do with it? A. For instance, we have situations like this come up.

Q. Can you answer that question? A. Yes, I can answer that.

Q. I wish you would? A. Just like the Gas Company. We should have a fund of somewhere from ten to fifteen million dollars just to take care of things that we cannot see. For instance, Mt. Washington. We had a good steel viaduct there, that we were running over and giving service. The City comes along and builds a new one along side of it, and for the sake of safety and because the public desire us and the city desire us to give up the old property and go on the new one. Now that becomes obsolete right over night.

If the Franklin street viaduct should be put across there would be another set of tracks become obsolete over night. We have got to have money in a fund to take care of those things.

If the Howard Street Improvement goes thru there are a big bunch of tracks around Richmond Market that will become obsolete and another piece of track will become obsolete and things are coming up all the time, just like the cars, when it came time to burn those cars up we should have had money in the fund to have bought new cars in place of them.

Q. What would you do with it? Keep it in the cash fund or invest it in your porperty? A. It would be invested in property or a cash fund.

Q. Would you carry it as a fund or as a reserve? A. don't think there would be any fund to accumulate, Mr. Clark.

Q. Well, if not, haw can you account for your accumulation of a reserve at present allowances? A. A million and a half in 15 years on the basis that we have had to capitalize everything above original cost. Now, if we had put the replacements at present day costs, which I hold should have been done, and really will have to be done, now that the valuation is reached, there would have been instead of a million and a half shown, we would have been quite considerably in the red.

Q. What you would do with that would be what you have done with the present $1,500,000. You would reinvest it in your property? A. Not reinvest it, we would have to use it.

Q. You would use it? A. Yes, we would have to use it.

Q. So if you got this $1,400,000 more than you are getting now you would use it? A. We would have to use it.

Q. You would use is as you have used the million and a half, wouldn't you? A. Yes.

But we would have to use it in replacements and in all manners of things that may come up that we can't see.

Q. Well, suppose we assume this? Suppose we assume that your present allowances will take care of normal replacement needs? A. But it does not, Mr. Clark.

Q. But it has? A. It has on the basis that the Commission has allowed for track only. For track only. Now, if we spent last year out of a depreciation set up, of $800,000, $700,000 that really means, $1,400,000, this is just speaking roughly that should have been charged to depreciation to replace that track that was worn out. We had nothing for cars, we had nothing for buildings. We had nothing for overhead. We had nothing for sub-

stations, and it's those things that make up the difference. Now we need it.

Q. What is the policy of utilities with respect to the use of their depreciation reserve? A. I think if they have any, rather than have it stand idle, they probably temporarily invest it in their own property.

Q. Isn't that the policy? A. That may be done.

Q. May be done? Don't you know that that is the policy of utilities? A. No, you take different reports. and you will see that they have built up a reserve of several million dollars.

Q. I am talking about the reserve, not the charges against the reserve. I am talking about now the accumulation, the reserve to take care of you you say future retirements or accrued depreciation or anyway you choose to put it, but I am talking now about the accumulation, the depreciation reserve over and above the realized depreciation? A. Well, it's a question of how much would ever accumulate. I think it would be so little it wouldn't mean very much.

Q. But you would accumulate, you would use as similar companies have used, and as this Company has used? You would use it in property extensions? A. You might. You might invest it.

Q. All right. Now, then, what is the average capital needs of your company at the present time? Somewhere around five hundred or six hundred thousand dollars a year? I mean your average now? A. We have run for a good many years up close to a million.

Q. The mid-year average? A. The mid-year average. I think it would be about $750,000.

I think a study of five years ahead, and refunding of maturities and refunding the expenditures which we should make amount to $17,000,000 in five years, so that shows a need of credit that we need very badly.

(The Chairman) How much of that is refunding?

(The Witness) About nine million of it is refunding. About eight million is capital improvements.

Q. But the capital needs to take care of the current capital requirements doesn't exceed $700,000? A. Yes, I would say they should exceed. We have simply had to hold ourselves down. I say we ought to have a million to a million and a half for capital requirements every year.

Q. So if you got this million four hundred thousand dollars more than present experience shows, you need, and you used that in property extensions and capital extensions, you would never have to borrow any more money would you? A. You wouldn't have it to use that way Mr. Clark.

Q. You could slide along then and do all your capital work out of these rates, couldn't you? A. No.

Q. Wouldn't that be a fact? A. No, I told you awhile ago that if we made the track renewals alone out of the depreciation fund at the valuation figure which should be done, and must be done, it would take about one million four to one million five to one million six for that alone.

Q. You can take that $1,400,000 more than you have needed in the past and you can make some new track extensions, in Baltimore City, couldn't you? A. No, I am not talking about track extensions. I am talking about reconstruction in kind, such as the people today are wearing out.

Q. You don't mean to say by that that there is the condition of deferred maintenance? A. No, of course, I do not. What I am talking and trying to get to you is this, Mr. Clark, as I said a while ago, a piece of track today that costs $50,000 originally costs $100,000 today. The $100,000 should come out of the depreciation reserve. We have only been permitted to take fifty out. That immediately doubles your amount needed for track renewals.

Q. Are you serious about that? A. Serious as can be.

Q. That that $100,000 should come out of the depreciation reserve? A. Serious as can be.

Q. What authority have you for that? A. Just this, if the Commission allows us $100,000 on a certain piece of property in a valuation, and we had to replace that

and if the rule holds we can only take $50,000 out of the depreciation fund and have to capitalize 50 that then shows $150,000 for that piece of property, which tomorrow would only be valued at $100,00 which can't be done.

Q. You haven't very much company in that theory have you? A. I think I have.

Q. Now Mr. Emmons, I want to get something straight in my mind. I want to know whether I have been fair or unfair. Mr. Markell, several times, referred to I think, referred to a policy of this Company to issue preferred stock. Probably you said something about that too. Did you? A. I did.

Q. What is your policy with respect to that? A. I didn't say policy.

Q. Now, policy then, your plan? A. We said it is our desire to issue preferred stock. We have no plan at the present time.

Q. Have you thought of a plan? A. We have not thought of a plan. We are not in a position to do it. I said it is our desire to issue some preferred stock.

Q. You have worked out no plan at all? A. I have worked out no plan at all.

Q. Have you conferred with the bankers or financiers on the subject? A. I have not. We are not in position to do it.

Q. Would you undertake an issue of preferred stock without a rate increase? A. I can't say that.

Q. Can you say yes or no? A. I don't believe we could ot it.

Q. You would have to have a rate increase before you could issue preferred stock? A. You don't have to put in a rate increase to issue preferred stock, because that would not be so.

Q. You are not sure that a rate increase would give you a revenue increase? A. I am very positive that it would.

Q. You are satisfied of that? A. All these figures

which I gave you make me positive that it will. In fact all these figures of decreases in certain cities shows that with a decrease in passengers and a change in rate has given them an increase, and——

Q. I don't want all that? A. I would like to get this to you if I could.

Q. I don't want all of that? A. This is very interesting, Mr. Clark.

Q. If you haven't given it, all right, but I think you are going to read what you already read? A. I was going to read something a little later. For instance, in Cleveland.

Q. We are used to these later figures, Mr. Emmons? A. If you are satisfied it will give a rate increase, all right.

(The Chairman) You testified to that at great length in the emergency case.

(The Witness) Quite at length, Mr. Chairman.

(The Chairman) The record in that case is part of this case.

Q. Now, Mr. Emmons, you said you appreciated that you had the right all the time to a larger return but you never came in to get your rights, is that correct? A. We never looked on it that way.

Q. Do you assign any reasons for not having come in for this time, for you to get what you claim to be your rights? A. There was no valuation before, as far as that is concerned.

Q. And the only thing that brings you in now is the passenger loss for 1927? A. I said, that's what brought us here.

Q. Now, Mr. Emmons, turn to Exhibit No. 6-C again a minute? A. All right.

Q. I have modified your fair return figure in this exhibit by applying certain adjustments and I want to get some information. You say "Adjustments of gross income to fair return." "Add profit and loss operating credits $41,676.00." Explain that?

(Mr. Markell) They are the same ones that were explained in the last case. They are on the original Exhibit No. 6.

(The Witness) The purpose of these adjustments——

(Mr. Clark) Just a minute, Mr. Emmons.

(Mr. Howard) I think that was gone into very fully in the emergency hearing.

(The Chairman) While you are looking that up we will take a five minute recess.

NOTE: The Commission adjourned for the purpose of taking a short recess.

AFTER SHORT RECESS.

CROSS-EXAMINATION (Continued).

By Mr. Clark:

Q. Mr. Emmons, in explaining Ex. No. 12-A, showing the car miles and the total passengers on the short city lines and car miles and total passengers on the long city lines, showing that the short line passengers have decreased and the long line passengers have increased, you made this statement, I think in substance; that that is accounted for largely by the fact that the outlying sections of the city have developed while the inlying sections as it were have stood still?

(Mr. Howard) You are referring now to one of the emergency hearing exhibits, and to Mr. Emmons' testimonly in the emergency hearing?

(Mr. Clark) No, I heard it for the first time in this hearing.

(The Witness) Oh, no, in the emergency hearing we had the same thing, but for fear that it wasn't definitely understood, that there was a real relationship there, I just repeated it in this hearing.

Q. What line did you throw around the inlying districts? That is what section of the city did you include in the inlying district? A. That goes to all short lines

like the one reaching Druid Hill Park and going out a distance of about two miles.

Q. You mean you did not include in your statement any distance greater than two miles from the center of the city? A. I can give you the lines that were included.

Q. I have the lines here in the exhibit. A. We included those lines, some have gone a little more than two miles, some a little less, but those are the lines included.

Q. Are those the lines included by Mr. Keller in his survey and his conclusions as to long and short line riders? A. I do not know.

Q. Don't you know, Mr. Emmons, as a matter of fact there has been a larger numerically speaking house development within three miles of the City Hall than there has been between the three-mile and six-mile limit in the past few years? A. I know the records I have here show that this Central Park that we have taken as the central zone, shows in 1910 a population of 451,000, and in 1920 a population of 455,000, and in 1925 a population of 415,000.

Q. There you are taking the congested district. A. There we are taking the two-mile limit.

Q. All right. Now, Mr. Emmons, I want to know why the power costs are increasing each year. I want to estimate why you increase the power cost next year. It seems to me that the Pennsylvania Water and Power Company are trying to head off your earnings judging from the stock market and other sources of information, and it's just a little puzzling to me, that they would be putting the tariff on this poor company year after year. Now, why do you estimate increased power charges for next year and don't estimate increased car miles? A. No, but you understand this, up until February, 1926, we had the old 15-year contract with the Pennsylvania Water and Power Company which gave us a very cheap rate, consequently, it is quite natural, why you can see, why after February 7, 1926, our rate would naturally go up because of the loss of that good contract.

Q. But I am talking about 1928. A. Yes, I am trying

to come on down. Now, we get to a point where we pay for power at what it costs plus 10%, and we do the best we can in an anticipated figure, what it might cost. We are figuring in 1927, for instance, .0936 per kilowatt hour, figuring that would probably be the basis. That is based on the actual cost of producing the current by the Consolidated Gas Company, plus what they buy from the Water Power Company, all put in one pot of cost, and our proportion of kilowatt hour capacity required to the total kilowatt capacity required of the Gas Company by the customers, so if you put those two together instead of .0936 it comes to .100351 or something like that which increases the power cost $150,000. We think we see where there is $30,000 we may save and we have reduced it to $120,000. Now the slight increases that the Gas Company sees coming next year, I don't know whether it's wages or what, but it's $25,000 increase in 1928.

Q. Your demand isn't increasing. A. Our demand is not increasing.

Q. Under your plan with the power Company, is this charge to be increased each year? A. No, it just depends on whether their costs go up. If their costs go up, ours go up. It might be if their costs come down, it will come down.

Q. In other words their costs determines? A. Their costs determines.

Q. And your demand of course? A. And our demand.

Q. If your demand stands still and doesn't increase, then their cost determines? A. I know, but as the other part of their business grows it naturally reduces their cost. The Gould Street Plant is supposed to reduce their cost and they certainly are not trying to make a more costly power production just for the purpose of collecting from us, because their point is to get just as cheap a production of power as they can which they are constantly striving for.

Q. What is the increase in that power charge next year, as you estimate it? A. About $25,000 over this year. This year about $120,000 more than we have been paying.

(The Chairman) In other words, Mr. Emmons, do I understand it to be substantially a cost plus contract?

(The Witness) It is a cost plus contract.

(The Chairman) Cost plus ten per cent.?

(The Witness) Yes, with the provision that we obtain a rate as cheap as anyone else under certain circumstances.

(Mr. Howard) Hasn't it load factor provision, to it too?

(The Witness) Yes, that makes part of the cost plus.

Q. The load factor of which company, theirs or yours? A. Both companies. All put together.

Q. But it isn't increasing in yours? A. Just at the moment, I think we are about at a standstill at the present time. We may have to put on more cars. We hope to put on more service if we get more money. If we do it will cost more money.

Q. Is that cost plus under the jurisdiction of the Commission? A. They approved the contract.

Q. I know that, but I mean from year to year the computation of the cost plus does that come before the Commission for its approval and its inspection? A. I don't think they have ever desired it.

I don't think either ot us object to having them do it.

Q. Now, Mr. Emmons, I have just one question more. It's a hypothetical question with no personal reflection. If a company doing $16,000,000 business desired to reduce its business two or three per cent. a year, it could do so by reducing the character, quantity and quality of its service to the public, couldn't it? A. That was a very peculiar hypothetical question.

Q. It can be answered yes or no, can't it? A. No, I don't think so.

Q. What do you mean you don't think so? A. Do you mean to say that any company would go out deliberately and reduce their miles? Now this hypothetical question would assume that some company would go out and de-

liberately reduce their mileage in order to deliberately reduce their earnings.

Q. I simply asked whether that couldn't be done? Whether there couldn't be a reduction of the quantity, character and quality or service that would reduce the volume of business down two or three per cent. if there were a mind to do it? Now I didn't say that's your prop osition, I apologized in the beginning, but it could be done couldn't it? A. I don't think any person would be foolish enough to go about a thing that way. I think any management, however, would reduce car miles if they found passengers being reduced.

Q. The answer is yes and everybody knows it and nobody questions it? A. The answer is not yes, it would be foolish for anybody to do it.

(Mr. Clark) That's all.

CROSS-EXAMINATION (Continued).

By Mr. Toole:

Q. I would like to begin where Mr. Clark left off. You get your power from the Gas and Electric Company, don't you, Mr. Emmons? A. We do.

Q. And where do they get it from? A. They make a larger part of it themselves at the Westport and Gould Street Plants. They buy some from the Pennsylvania Water and Power Company.

Q. Do you know what portion of that power they get from the Pennsylvania Water and Power Company? A. About half.

Q. And where does the Pennsylvania Water and Power Company get it? A. They have both a water and steam plant up at McCall's Ferry.

Q. Don't some other company own that plant? A. Indeed I don't know. I thought the Pennsylvania Water and Power owned it.

(The Chairman) The Pennsylvania Water and Power Company owns it.

Q. I saw a statement in the newspaper to the contrary the other day? A. As far as I know they own it.

Q. Then all of that power that you get and on which you are basing largely a demand for ten cents, the Pennsylvania Water and Power Company makes a profit or at least endeavor to, and the Gas and Electric Company make a profit, before you get it and you pass it on to the people? A. That's true, but the Gas and Electric Company do not pay the Pennsylvania Water and Power Company any more for the power than they have to. And I know they have very serious contests as to what the amount shall be, always insisting they buy the water power cheaper than it costs them to make it themselves over at Westport.

Q. That may or may not be, but they do get it and in selling that power to you they make a profit? A. Both of them are proper profits.

Q. And I assume the Pennsylvania Water and Power Company makes at least as much if they sell their power to the Gas and Electric Company? 10%? A. I say both of them are proper profits as long as the Gas and Electric Company are buying even with the profit of the power company, power at less than they can make it themselves.

Q. Of course I buy electricity less than I can make it myself too? A. That's right. So it is a good contract for you.

Q. It would cost me more to walk to Washington than to ride on the trolley car or on the railroad, but that don't mean to say I should pay as much as it would cost me to walk to Washington. Now do you know who built the power house on the Susquehanna up there in Pennsylvania from which the power——

(The Chairman) (Interrupting) Mr. Toole, I don't see that that has a thing to do with the case. If you are asking those questions in order to build up an argument for Municipal Ownership, or state ownership or Federal Ownership, for those properties, then we will have to rule them out. They have nothing whatever to do with the case Mr. Toole.

(Mr. Toole) It has this to do with the case, if you will

let me explain. For instance, here is a company, a private company, are going to charge 30% increases or wants to. Now, surely all the frame up of their expenses has something to do with that. Now, if it can be shown that it can be done cheaper some other way, it seems to me that that thing is of getting great interest, not only to the people but to the Commission.

(The Chairman) If you can show that it can be done in some other way, other than by public ownership, that's a matter that will come before this Commission. But this Commission has nothing to do with public ownership. It can't order public ownership, it can't pass on that question at all. It must determine this case according to the law, and whether it would be interesting or not, the question at issue, is whether that Company is entitled under the law to an increase in rates under condititons surrounding the Company, but we cannot go into any questiton of public ownership.

(Mr. Toole) Sure you cannot, but at the same time, would it not be relevant as to their costs, in their pursuing an agitated method or antiquated method of carrying on their business, and I would ask in about a more up to date method of producing electricity, cheaper?

(The Chairman) If you can show that, well and good.

(Mr. Toole) That's what I want to do only in a few words.

Q. (By Mr. Toole) For instance, suppose you bought your electricity directly from the dam, wouldn't it be cheaper? If you would eliminate the 10% profit that the Gas Company makes and the 10% profit, more or less, more very likely that the Pennsylvania Water and Power Company gets out of it, wouldn't your cost be just exactly 20% per cent less? A. We couldn't do it.

Q. I say if you could? A. I know, but we couldn't. There is no if about it. Our load is not the kind that the Water Power Company would want in itself, consequently they take a customer like the Gas Company, that can take all of their power, they get from them the very best rate they can, the Gas Company making the very best contract they can, and those two people fight about

that contract, though friendly, just like enemies would do. So there is fair profit to the Water Power Company and yet a good contract to the Gas Company. Now the Water Power Company wouldn't be interested in serving us.

Q. I know they wouldn't, because that would break up the picture. A. No, it wouldn't. We wouldn't have the kind of a load they want.

Suppose there was a company up on the Susquehanna River that would sell directly to you as well as other people. Not only to you, but to others, sell indiscriminately to whoever wanted it, would not that save you 20% on the cost of power?

(Mr. Howard) You mean water generated electricity alone?

(Mr. Toole) That's all I am talking about now.

(The Witness) No person would ever tie up with a purely water power proposition, because then the cars of the city would be standing on the streets sometime.

Q. Suppose that the power you buy now, that you could buy it directly from the dam, on the Susquehanna River. Would it not save you 20% on half of your power? A. It certainly would not, because they certainly wouldn't sell it to us at that rate.

Q. I am assuming now that there was a company that would? A. You can make that kind of assumption. You can assume the Company would give it to us.

Q. I am trying to find a way whereby you can get out of your trouble. A. You can guess.

Q. If you can't eliminate 20% of half of your expense for power, that would mean an actual reduction of 10% of your expenses in power alone which is absorbed by two companies, being in between you and the source of power? A. You have to have that absorption of the two companies in order to get a rate as cheap as ours. Our load is such that if we made it ourselves, we would not get that low a rate.

Q. I don't think it would be advisable to make it your-

self. You know about the Ontario Company that sells all Ontario. Does not individual power companies and lighting companies, private and public as well, buy directly from the Ontario Company? A. Yes.

Q. Now there is an instance in point. A. I think that is maintained thru the tax rate to some extent too.

Q. Suppose you had a company like that here, private of public that would serve to all the towns——

(The Chairman) But Mr. Toole, we haven't got such a company, and there is no possibility of getting one and we are dealing with present day conditions.

(Mr. Toole) If he will say yes, that will satisfy me.

Q. (By Mr. Toole) Say yes. A. I say the supposition is an impossible one. How can I say yes?

Q. Well, I think it would Mr. Emmons. But still we will let that go for the time being. In your examination in chief I understood you to say that all the railroads were in a bad way? A. I think most of them are.

Q. Now by that you mean that the privately owned roads. You don't mean the publicly owned roads? A. The municipally owned roads are just as bad.

Q. Which ones? A. And Seattle.

Q. I have a letter from Mr. O'Shaughnessy and he tells me just the opposite? A. San Francisco? Shall I read you the latest reports?

Q. I have one here quite different. Mr. O'Shaughnessy, City Engineer, I will read it.

"October 17, 1927.

Mr. Wm. A. Toole,
2134 North Fulton Street,
Baltimore, Md.

Dear Sir:

Your letter of October 6th has been received. It gives me pleasure to mail you such data as I have available regarding our Municipal Railways.

This is a unique institution. The total bonds voted for road construction amounted to $5,500,000. $2,500,000 of this amount has been retired from the earnings. The road has expanded from its original 45 miles to 72 miles, and a reasonable valuation of it today would be $10,000,000. So the City has profited to the extent of $7,000,000 in coin by the enterprise, as well as guaranteeing the 5-cent fare. Our cars and equipment are the best in the country and the labor scale is $6.00 for 8 hours.

With kind regards,

Very truly yours,

(Signed) M. M. O'SHAUGHNESSY,

M. M. O'Shaughnessy,
City Engineer."

A. I have quite a different statement from that.

Q. Here is a very pretty picture? A. May I read this statement that was in a recent paper?

"The City of San Francisco owns and operates a very extensive street railway system. For several years it has failed to earn above other operating expenses the bookkeeping entry of taxes. This year the income of the system failed to meet the total charges against it of $55,873.00 without regard to the aforesaid theoretical taxes. This failure of the San Francisco Municipal Street Railway to meet all the charges against them is the subject of analysis in the city published by the San Francisco Bureau of Governmental Research in its issue of October 5th. This analysis shows that if the San Francisco system were privately owned it would have an expense of taxes of $327,058 added to the $55,873 deficit, this means a theoretical deficit of $382,931.00 for the year 1926-27. The San Francisco Bulletin discussing this situation mentioned that during the recent Bond Election campaign municipal street cars carried poster readings 'Patronize the Municipal Railways. Its profits are your profits.' The Bulletin says at that time it suggested that the second sentence of the statement should read its losses are your losses."

So there are the two sides.

(The Chairman)That's all very interesting but as a matter of fact neither Mr. Toole's letter nor that record have anything to do with the case at all.

Q. Where did you get that article? A. I think it was out of one of Dr. Ely's magazines.

Q. Well we know where that letter came from? A. There are always two sides to the picture Mr. Toole.

(The Chairman) And neither of them have anything to do with the case.

Q. I think we could compare a privately owned road the same as a publicly owned road and vice versa, if we can show this road is operated better or otherwise. Detroit pays its taxes, doesn't it? A. A great deal of question about Detroit. There are two sides to that too. They set taxes up but the claim is that a great deal of the expense of the Street Railway is borne by other departments. We pave the city streets. It costs us sometimes $350,000 a year.

Q. What is the fare in Detroit? Do you know that? A. Six cents, plus one cent for transfers.

Q. Some difference between six plus one and ten? A. Some difference in Detroit and Baltimore also.

(Mr. Tingley) That's also an automobile city isn't it?

(The Witness) Yes, they are making a terrible loss just now. I imagine they will be raising the rate themselves.

Q. I have a report up to the 30th of June, 1927? A. Poor's Manual has the reports for last year.

Q. I don't want to take your time reading it to you, but it has a very different story, the report I got last night.

In the exhibit I forget the number of retirements you notice for the years 1924, '25 and '26, $3,858,256.00 as retirements and also for the same period $2,858,509.00 as value added, leaving a net increase in valuation of $1,005,270.00. Do I understand you to mean that this

so-called new value is for the purpose of rate making? A. It's an increase in the valuation of the cost of the property at the present time.

Q. If so, what about depreciation? A. Depreciation is taken care of in that. Those retirements are part of the depreciation.

Q. But there is a general, outside of those retirements, a depreciation. For instance if a car comes down town, and you don't repair it there is depreciation on it, the same as if a man owns an automobile, and he goes up here to Cumberland and back, he accounts for the depreciation even tho he doesn't retire the automobile? A. In putting that in, I think we have held our 85% condition when the valuation was made.

Q. But there would be a general depreciation of every car and every track, would there not be? A. A general depreciation, but the maintenance on those cars to keep them up——

(Mr. Tingley) You mean there has been no depreciation since December 31st, 1923?

(The Witness) Above the 85%?

(Mr. Tingley) Yes.

(The Witness) I think no.

Q. Take the same articles that were valued on January 1, 1923, if they were valued now, or January 1, 1928, in those five years wouldn't there be a great falling off in the value of those articles? A. I don't think so because we maintain them. For instance take our cars. Our shop has repainted the cars. In fact the cars are better painted today than they have been for years .

Q. Some of them are prettier? A. We have been on new wheels, we have rewound armatures, put in new bearings, and fixed the cars so I would say today the cars are in better condition than they were January 1, 1924.

Q. Of course the track and road bed under the same cars are worth more money than they were January 1, 1923? A. Because we have added this capital to them.

(Mr. Howard) You overlooked the addition of brand new property?

(Mr. Toole) I am taking that into consideration.

You say taking the retirements and your additions you have a net addititon of one million and some dollars?

(Mr. Howard) But the gross addition is all new.

Q. Now, I say in my opinion, rather, I will ask you, don't you think that general depreciation outside of those noted would equal that million dollars? A. No, I do not.

Q. You would consider it wouldn't? A. No, I think it's perfectly right that the maintenance we put in the property which doesn't show here, and the depreciation we put back into the property has held our property in a proper condition.

Q. In the opening address of Mr. Markell he spoke of certain great changes that have taken place in the equipment of railways, that is the change from horse car to cable car and cable to trolley and indicated that greater changes may take place in the future. Do you anticipate changing the present equipment of your road in any way? For instance from trolley to buses? A. No, we do not anticipate that.

Q. You don't anticipate then any great changes as Mr. Markell seems to think? A. I think Mr. Markell feels just like the power situation. We have had up to date manually operated sub-stations. Now we are getting gradually as we can into automatic sub-stations as other places are. There may be a type of motor come around that would be more efficient and there may be a type of car. We will have to perhaps make some changes in track and special work to suit different conditions.

Q. But in the event of any great changes as existed in the past happening, or your being compelled to adopt them, do you think it would be fair and just for the public to favor those changes? A. As they come?

Q. No, any great change? A. If it's to the benefit of the public, I think it certainly would be fair, and that's the idea of a depreciation reserve above anything else.

To keep your property so you can give good service to the public.

Q. You think then where other people would be caught, lose the profit, that the Commission should guarantee you against losing any profit at all? A. The Commission does not guarantee it, but other people you are talking about are able to accumulate a large surplus in heydays.

Q. Do you think you ought to have a surplus big enough to take care of any change whatever? In the bus lines for instance? A. I don't think the Commission would or could guarantee anything like that.

Q. Mr. Emmons, do you attribute the falling off in passengers, or you do almost altogether to the increased use of automobiles, if I understand it right? A. I do, yes.

Q. Don't you think that an increased fare, say the ten cent fare would cause the use of more automobiles, especially in the face of the fact that an old Ford can be gotten for $50.00? A. The fellow that buys an old Ford for $50.00 will pay more than ten cents to come to town.

Q. I know but look at the fun he has? A. He may have a lot of fun, but he may break down sometime, but I think the automobile is cutting into our business and will increase no matter how much the fare it.

Q. Don't you think it might increase more if you increase the fare to ten cents? A. No, I think it will increase if the fare stays the way it is.

Q. Don't you think that three or four in a family pay ten cents car fare that they could run a $50.00 Ford cheaper, going at the same time? A. If they all go to the same place.

Q. Or taking or picking each other up as workmen do? You noted the other day, I believe that around the factories were automobiles? A. Yes.

Q. Do you know or do you not that those automobiles go by and pick up half a dozen people and take them to work? A. I think they would do that Mr. Toole, if we charged five cents, or three cents.

Q. Don't you think that would be largely increased if the the fare goes up to ten cents? A. I don't think materially so. No, sir.

Q. Don't you think that in the event of an increase to ten cents, that the people would patronize the neighborhood business centers more than they do now? For instance, if the man an wife and two children over 12 years old go down town, they have to pay ten cents each. The trip down town and back for the carfare alone would be 80c. Don't you know that old Ford could go to a neighborhood movie for that much? A. If the movie is a good one, I presume they do, and I presume they do now in spite of the car fare.

Q. But at the same time, if you add 80c on a trip down town——

(Mr. Howard) You say add 80c—The present trip costs something.

Q. Now, you pay about 60c, but 30c you would add to it? A. You would add 20c for four people.

Q. Yes. Don't you think that would—— A. Deter them from going?

Q. Yes? A. No, I don't think so.

Q. I buy my shoes clean out the other end of town. I buy them down here on East Baltimore Street very close to Exeter. Now, I pay say 15c to go down there. If I have to pay 20c that adds five more cents to the cost of shoes. Now, you apply that to everything, a family is going out to buy incidentally, if you add this increase, don't you see that there will be more tendency not to go away from those centers like say Fulton and Pennsylvania Avenues where I live, Carrollton Avenue and Baltimore Street, 36th and Roland and other points like that? A. I feel this way, if the stores in those neighborhoods have what you want you will never go down to Baltimore and Light Streets or some place like that.

Q. As a rule don't you know that down town really has a better selection, but increased car fare would tend to not give them the leeway that would allow them to get the better selection? A. I don't think that 5c on a round trip would make any result like that, Mr. Toole.

Q. All right. I do. Is it not true that people as a rule have a decided prejudice against paying high car fare? You know that? A. Do you see the dirge of the dime, Mr. Toole?

Q. For instance, when I was young I used to go down to Back River. Sometimes a lot of people stopped at Back River with a couple of dollars to spend. Before they would pay an additional nickel to go to Middle River they would spend those couple of dollars at Back River. Wasn't that so? Or don't you remember those happy days? A. No, that's beyond my time.

Q. Now, take River View. As a matter of fact do you not make one fare to River View in summer time because you know the people wouldn't pay two fares to go down there? A. They don't pay the one, Mr. Toole. The single fare to River View has added almost nothing to the traffic to River View. That is pretty near proof that the present fare doesn't count.

Q. But when the 5s cent fare was in effect they went there? A. Just because they had a nice, jolly place to go and the automobile wasn't used so much then. If you go back to those days and at that time and under those conditions they would pay 10 or 15c because they wanted to go.

Q. Why is it they wouldn't go to River View unless you had one fare to Riverview? A. I say they would go to River View with the one fare.

Q. Yes, they did? A. We reduced it from two fares to one to try to get them to go.

Q. And why is it they never went to Middle River, which is more sportier and everything else than Back River, and they would stay at Back River and spend four or five dollars to save that other nickel?

(Mr. Markell) May be they weren't sporty.

A. I don't believe 5c ever kept them from Middle River if they wanted to go.

Q. I am sure the Commission remembers those happy days and they will consider that when they make their ruling.

Now, Mr. Emmons, Mr. Clark said he begged your pardon for asking a question, but I am going to ask you one and I am not going to beg your pardon, and I know you are not going to get mad. I am far enough away from you to keep you from biting me too.

Is it not true that directly before the preliminary hearing and directly before this one there was a big cut in service? A. No. If you are trying to link up any change in service I will say to you, if you are trying to link up service with either of these hearings there is absolutely no truth in it.

Q. On the eve of these hearings the newspapers published in rather big headlines—— A. You mean the Post published it.

Q. Well, that's a pretty good newspaper. Anyhow, some of the papers did it. Didn't you cut service right before these two hearings? You said you didn't, and if you did you didn't do it on account of those hearings? A. That's my answer.

Q. You did cut it though? A. We have been making the usual cuts at this time of the year to make the schedule conform to the traffic.

Q. Now you stated in your examination in chief that on some of the lines there was a 15-minute wait? A. One goes out my place where there is a 15-minute wait.

Q. Don't you think that tends to cut service as Mr. Clark says? A. Cut riding?

Q. Yes? A. I have said I would like to be in a position to give nothing less than a 10-minute headway.

Q. I mean a man would rather walk than wait 15 minutes? A. No, because he would schedule himself to get there at that time just like he would schedule himself to get to a steam railroad station.

Q. But as a general rule don't you think they would be more apt to walk? A. No. Those long headways the people adjust themselves for those times. We have schedules for those lines and the people have those schedules in their homes so they know just when those cars leave Bedford Square, for instance.

Q. When one of the one-man cars was late they told me it was 15 minutes headway but it seemed much longer. A. Did you see whose coal wagon was holding it up that long?

Q. It was 10:00 o'clock at night so I don't think it was a coal wagon at that time.

Q. Mr. Tingley asked you if there were not a concerted movement among the railways of the country to get higher fares. What was your answer to that, Mr. Emmons? A. I said there was not that I knew of. No that isn't so, Mr. Toole.

Q. But it is a fact that, as you have stated, they are all asking or getting ready—— A. I did say there were sixteen cases pending I think at the present time and thirty-two changes in rates of fare had been made since the first of the year.

Q. Now all of this business really began in prosperous times, did it not, when everybody was working and what might be called good wages? In fact did not Mr. Markell say in his opening statement that the people were as well able to pay 10c now as they were 5c sometime back? A. Yes.

Q. Now suppose then that hard times would come, and they are coming, you admit it will be a little worse before the Presidential election, and some people, a great many people believe that it will be as bad as in Harding's administration, now suppose, as was in Mr. Harding's administration for awhile, some six or seven million are out of work or working short time, suppose that would follow, would you consider a raise to 10c justifiable? A. That isn't so just now and it isn't prospectively so.

Q. But if it were so? A. I don't see where the people out of work, while there might then be some cause of a decrease in earnings, why we shouldn't have a proper rate of fare.

Q. And if such as outlined above was the case after the 10c fare was granted, if so, and riding fell off, would the United ask for a still further advance in fare if your

revenues would fall off because of unemployment? Would you come in here and ask for more fare? A. That would depend entirely upon the conditions at the time. I couldn't answer that, Mr. Toole.

Q. Now during the days of the Iron Horse, the Fair of the Iron Horse, you say that during that period that only one day your fares increased? A. I did.

Q. Isn't it possible to be some mistake there, Mr. Emmons? A. I don't see how. We certainly didn't juggle our figures to get that result.

Q. Of course, I know you wouldn't do any such thing? A. And I know my own men wouldn't do it either.

Q. Don't you think some over-zealous employee would cause you to have been mistaken in that? A. I certainly do not.

Q. The more people you carry the heavier your light bill is? A. Power bill you mean?

Q. Yes. It's light to me and power to you. The heavier your power bill is? A. Very little.

Q. If you carry 100 people on a car does your power cost any more than if you carried one or two? A. Very slight, because the weight of the car itself, the pulling of the car itself is the big item.

Q. Then your power costs are not greater in the peak than in the dull part of the day? A. Of course they are because we have more cars on.

Q. No. More per car I mean? A. It's the peak really that makes our one item the cost. The maximum use of the facilities of the Gas Company.

Q. Well you couldn't check up on your cost of your power during the period of the Iron Horse could you? A. Oh, I don't think so.

Q. Now I am going to ask you something that I want to clear up in my own mind. When a school child buys twenty tickets for a dollar, when would that get credited to revenue? When it was bought or when the tokens were collected?

(Mr. Howard) In these exhibits as filed?

(Mr. Toole) No not the exhibits.

(The Witness) The earnings as they come in.

Q. You mean when the money is paid? A. No not when the money is paid. The collection of the tickets. Now, for instance, we have in these an adjustment Mr. Clark asked about a while ago, an adjustment on unredeemed tickets. It's the tickets that come in, that the revenue passengers put in, are taken into the daily earnings. If you would buy $10,000 worth of tickets today——

Q. That wouldn't be put in today. Only when it was collected? A. That wouldn't be put in today. Only when it is collected.

Q. That's what I thought. Now I have one more question to ask, Mr. Emmons. The rate of wages on the United are no higher than the rate of wages on other companies, are they? A. No.

Q. Of the same size as Baltimore? A. Some southern cities are higher but northern cities are less.

Q. But there are very few southern cities as big as Baltimore? A. That's true.

(The Chairman) Mr. Sobeloff, have you any questions to ask?

(Mr. Sobeloff) No, sir. I think the subject has been so fully covered that I have no questions to ask.

CROSS-EXAMINATION (Continued).

By Mr. Benson:

Q. Mr. Emmons, I think in answer to one of the questions to Mr. Toole or Mr. Clark, I don't know which, you said in taking your short haul riders you took two miles? A. Two mile limit.

Q. Approximately two miles? A. Yes.

Q. Where did you figure that from? A. They are gen-

erally taken from Charles and Baltimore. It's called the center usually.

Q. So you estimate from the center of the city? A. We call that the center of the city.

Q. I say but you do estimate from the center of the city? A. Yes.

Q. Then you don't agree with Mr. Markell that the center of the city is what he calls a fanciful and arbitrary location to measure the whole of traffic from? A. It depends on what you are using it for. Of course one center of the city would be a line drawn from four corners and it would be up at——

Q. We all know where the approximate business section is and that is where the traffic comes, isn't it? A. We use usually and the city recognizes the center, in numbering east and west, is from Charles Street, and north and south is from Baltimore, so that has been taken as the center usually.

Q. Now what percentage of your passengers that you haul approximately, I don't suppose you have the exact figures, use the center of the city as the beginning or the end of their ride in the morning and afternoon? A. It would be mere guess. I don't know but I would imagine that a very large per cent.

Q. 90 or 95%? A. I don't think that much, no. It might be 75 to 80, something like that. It's a guess. I haven't any figures about it at all.

Q. But when you were figuring your long and short hauls you did use the center? A. We did, yes.

Q. And the supposed mileage has some bearing on how far a zone should extend? A. Well, when it comes to the question of the city limits unfortunately the miles in the American city doesn't count, because here in Baltimore, with the center taken as Charles and Baltimore, that is very far from the real geographical center of the city, so to go from that center out to Overlea or out to Slade Avenue it's a very much longer distance than going directly west on the Frederick Road.

Q. Then I assume from your statement that all extensions beyond the city limits then, if there be no question of disadvantage to any locality whatever, should be the same distance beyond the city limits, is that the idea? A. That opens up the question of zones and rezoning and after having some very elaborate maps prepared with the idea of explaining the whole thing in this case we thought it was so involved we wouldn't do it.

NOTE: Previous question here re-read by reporter.

A. Theoretically, if you want to justify a mileage collection, collection by the mile like the steam railroads do, that would be true, but the situation has grown up here on this system from extensions of the city limits and slight distances over the city limits and overlapse so that there is quite a little difference in the different lines.

Q. Mr. Emmons, you are an engineer as well as president of the railroad? You are a technical man? A. I am a graduate engineer.

Q. I am going to read you a provision of the Code of Maryland with reference to discrimination which has been passed on and is similar to Codes in most states, passed on by the Supreme Court of the United States. Now I presume you know what prejudice or disadvantage to an individual or locality means, don't you? A. I should, yes.

Q. Yes, you should. Now then this provision which I have taken out of the Code word for word is that no common carrier shall make or give an undue or unreasonable preference or advantage. Now you understand what preference or advantage means? A. Yes.

(Mr. Markell) Undue preference.

Q. I will leave the word "undue" for the Court to determine? A. Yes.

Q. To any person or corporation or to any locality. Now then it goes further and it says, or subject any particular person or corporation or locality to any particular description or any particular description of traffic to any

prejudice or disadvantage in any respect whatsoever, and it doesn't use the word "undue."

Now I want to ask you if that language is to be given any interpretation whatsoever if you don't have to have some place to measure your service from, either from the center of the city or from the outlines of the city? A. Well, we of course have felt that the city limits on a 10c fare is the absolute limit that can be given because of the free transfers from one part of the city to the other that that entitles a person to. Now if because some lines go a little bit beyond the city limits, there are always two ways to equalize, work up a rate on those rather than take a rate from you if it's a question of equalization, and rather than again get in the position of having the constant pushing forward of our first fare limit we would have to ask the Commission to go back to these other places and raise the fare in those others and take from you.

Q. Mr. Emmons, if the first fare of all of your lines was not to be any larger or longer than the first fare from the center of the city to Oaklee Station—— A. It isn't a question of distance.

Q. And the second fare of all of your lines was not to be any longer than the second fare to Halethorpe, then you wouldn't need any increase would you? A. That would make a very different situation of course. I couldn't answer whether we would need more fare or not, but it would make a very different situation.

Q. Well, now if you are going to make any interpretation at all of the law where do you make it? A. Senator, I am not a lawyer.

Q. I understand you are not, but you are a technical man and you know what prejudice and disadvantage is, and you know that when you give one community a haul of six miles and want to charge them 20c for it, and you give other people a haul of seven miles and only asking the previlege of charging them 10c for it, you are giving a preference to the individuals living in that community beyond the city line where you give them a seven mile haul for 10c and try to collect 20c for a six mile haul out

of the other place? A. I think that's a matter of argument.. The only thing I can say if there is discrimination there are two ways to relieve it.

Q. I want to ask you squarely if that isn't discrimination. I am not asking whether it's undue discrimination? A. I do not think it is because of the fact that the city limits intervenes there. Now as I said to you the last time in the other case that if beyond the city limits a single fare was made to Halethorpe, it's the same distance to Towson beyond the city limits. Now if we hold that the city limits is the limit as far as the 10c rate is concerned, and this was extended to Halethorpe, what reason is there why Towson should not come in and say we should go beyond the city limits the same as the Halethorpe people? Then we get in the position we have been in every case before, of having everything taken away from us that was given us.

Q. Irrespective of Towson and Catonsville, don't you now go to Dundalk for one fare? A. We do.

Q. For one fare? A. We do.

Q. How far is it beyond the city line? A. 1.59 miles.

Q. 1.59 miles? A. Yes.

Q. I will ask you now why are the individuals residing at Dundalk entitled to 1.51 miles ride out in the county and a longer ride in the city in reference to what the individuals at Halethorpe are entitled to? A. I gave you the distance to Dundalk Junction, and the reason that the fare was extended out there was so that these converging lines would have a transfer point. The Dundalk people only got .93 miles beyond the city limits. 1.59 is to Dundalk Junction. It was put out there to get that transfer point to get back to River View Park.

Q. They not only have a direct privilege but they have a transfer privilege then out there? A. That's the reason it was put in.

Q. 1.59 miles out in the county, don't they? A. Yes.

Q. Now do you mean to say that any resident down there at Dundalk Junction hasn't got a preferential right

over the people at Arbutus and Leeds on the Halethorpe line? A. If you are going to take distances carried you might say that.

Q. Answer my question. You know what preferential rate means. A. Again I say that there is two ways, if there is a preferential rate there are two ways to correct it.

Q. I asked you whether it existed, and I insist upon an answer whether it exists or not. We will let the Chairman determine upon the method of correcting it. A. I do not think so because the city limits to my mind is the limit of the first rate and the distance to Dundalk Junction is less than the distance from the city limits to Halethorpe.

Q. How about Leeds, .4 of a mile to the city limits? A. You run to Leeds for one fare.

Q. Leeds Avenue at Oaklee Station. How about the development of Leeds? A. I don't know about the community of Leeds. I am talking about Leeds Avenue.

Q. I am talking about Maiden Choice Lane, .4 miles?

(Mr. Howard) That's not the end of the road though. You can take a point that's only a hundred yards further and say the same thing.

(Mr. Benson) Mr. Howard, you will have a chance to get to that. If you want to object to my questions you can do it, but I object to you coaching the witness.

Q. (By Mr. Benson) I asked you if you weren't giving a preference to the people at Dundalk over the people at Leeds? A. Well, if you take the people at Dundalk and the people at Leeds, you can come in further from Dundalk and go to East Pittsburgh, and you have the same distance outside of the city limits as you have at Leeds, and I can't see that at all, because as I say you can take the very limit of this first fare zone on one line and the first half mile of the fare zone on your line and you can say there is a so-called preferential there, but you can't adjust to every half mile or every quarter mile.

Q. Then your position is that neither the city line nor

the center of the city should be the measure of the distance so as not to have a preference or advantage to one community over another? A. No, I didn't say that. I said we usually use the center of the city for measurement purposes, but I would never say that that was the real place to use for preferential purposes. I have said that we use the city limits for the limits of the city fare and beyond that I have also said that if because you have a second fare out to Halethorpe——

Q. Now you say you use the city limits. How many places do you use the city limits as the limit for the city fare? A. Nearly all around the city.

Q. Do you use it at Slade Avenue? A. Yes, sir, absolutely.

Q. As a matter of fact, isn't it .4 miles beyond the city limits at Slade Avenue? A. My recollection is that Slade Avenue Station is within 50 ft. of the city line boundary on Park Heights Avenue, and that is the end of our zone limit.

Q. Won't you measure it again and find out, because I measured it this morning on a county map and it's between 1,800 to 2,000 ft. A. Did you measure along Slade Avenue or Park Heights Avenue?

Q. Along Park Heights Avenue. Everybody knows the difference between Seven Mile Lane and Slade Avenue? A. Seven Mile Lane is not the end of the city limits. It is in front of the Suburban Country Club entrance.

Q. The city line goes right through Mr. Wolf's house then? A. I don't know where it goes, but I know the marker of the city line is beyond that.

Q. Then I am wrong about coming through Seven Mile Lane at that point?

(The Chairman) I think you are, Senator.

Q. I beg your pardon about that. You don't extend then beyond the city at all there? A. No, I think we are very close to the city line.

Q. Well now, if you treated the people at Pikesville

as well as you treat the people at Dundalk you would carry them then on one fare when you are using the city line as—— A. I say there is a situation that required that Dundalk arrangement.

Q. What was the situation? A. The meeting of those two lines that would make it unnecessary for the people in Dundalk to come clear up to 15th Street to come back to River View Park.

Q. What was the situation that required you to take over more than two miles of road that wasn't paying and go out into the county about half a mile to a mile to Lorraine Cemetery? A. You have the reason right next door to you.

Q. Well you gave them a preference then, didn't you? A. No, I don't think so. As I said before if he has a preference there are two ways to correct it. One is to put the fare back on them.

Q. I ask you first whether it's a preference or not over Halethorpe in that community? A. No. Lorraine they are carried perhaps half a mile beyond the city limits.

Q. Harford Road at Taylor Avenue, how far are they carried beyond the city limits? A. Harford Road and Taylor Avenue are very close to the city limits.

Q. Across the line though isn't it? A. Very little.

Q. Now, Mr. Emmons, if you were to use the short yardstick that you are using on the Halethorpe line as the measure of your service and the value of your service, 4⅜ miles on the first zone to the center of the city and a mile and ⅞ on the second zone, on the No. 14 line there should be three fares to the Harford Road instead of two, shouldn't there? A. I haven't checked that up but that may be so.

Q. And on No. 23 line there would be three fares to Mace Avenue, wouldn't it? A. That may be so.

Q. And on No. 8 line there would be three fares to Catonsville Junction? A. I say I haven't measured it up, but that may be so.

Q. And on No. 15 line there would be two fares to Overlea, wouldn't there? A. That may be so.

Q. And on No. 35 line there would be two fares to Lorraine Cemetery, wouldn't there? A. Very likely.

Q. Can't you say yes to one of them? A. No, because I haven't measured them. I think you are right.

Q. Don't you know I am right to Lorraine Cemetery? Don't you know Lorraine Cemetery is further out than Halethorpe? A. I don't know that it is. I am not sure.

Q. Will you look and find out? A. On this map it looks like it might be quarter of a mile farther.

Q. Yes, and you ride out there for one fare where you charge Halethorpe two. Now No. 28 to Lakeside there would have to be two fares, wouldn't there? A. On the same measurement, yes.

Q. Now let me ask you something about Lakeside. Why does Lakeside get the preference of the haul out into the county without any additional fare? A. Lakeside is only about one-third of a mile beyond the city limits.

Q. Well why does it get that one-third of a mile? A. The Commission have ordered the extension to the end of the Lakeside line.

Q. All these extensions were ordered? A. Ordered by the Commission.

Q. Except Lorraine Cemetery? A. That also was ordered by the Commission or the fare was set by the Commission. That was agreed upon when we took it over.

(Mr. Benson) I wish to offer in this hearing the record in Case No. 2587, in the matter of the application of the Lorraine Electric Railway Company of Baltimore, Maryland, and the Maryland Electric Railways Company and United Railways and Electric Compan.y

Q. (By Mr. Benson) Now then Sparrows Point there would have to be four fares to Sparrows Point on the same basis, wouldn't there? A. I will have to answer

the same way. I haven't measured it. It looks like it might be so.

Q. Carney, No. 19 line, there would have to be three fares, wouldn't there? A. That may be so.

Q. No. 32 there would have to be two fares to Woodlawn, wouldn't there? A. That may be so. It's about like Lorraine.

Q. And No. 5 there would have to be five fares to Turnpike, wouldn't there? A. That may be so. I haven't measured it.

Q. Now, let me ask you where that Turnpike Station is? A. It's out on the Reisterstown Road. You mean the distance of it?

Q. Where is it?

(The Chairman) In the neighborhood of Owings Mills.

Q. It's right where the Greenspring Valley Railroad crosses the pike out there? A. Yes.

Q. Right out the Greenspring Valley? A. Yes.

Q. For two fares? A. That's the limit of the second fare zone, yes.

Q. Now, if those people up in Greenspring Valley get a haul to Baltimore for two fares what's the idea that they should have that great haul for two fares and the Halethorpe community have to pay the same price? A. You have gone just the limit the that second fare.

Q. Well, Halethorpe is the limit too? A. The people at Pikesville also have to pay two fares and that's quite a distance in from Turnpike.

Q. But quite a distance beyond Halethorpe, isn't it? A. Yes, that's so.

Q. Now isn't it fair, where you are extending out into the county, in some directions like Woodlawn, like Dundalk, more or less distances, Taylor Avenue, Lakeside and these other locations, isn't it fair that you should take the distance of the haul from the center of the city

rather than the distance beyond the city line? A. No, I do not think so, Senator.

Q. Now what have you got against us out in Baltimore County? A. I haven't a thing against you but I do want to say this——

Q. Isn't it cheaper to run out in the county than it is in the city? A. As far as cheapness is concerned——

Q. Less tax, isn't it? A. We have for eight years operated a line out to Halethorpe to develop property at a red figure every year.

Q. Eight years only? A. I have got figures for eight years here.

Q. Well, you voluntarily started in on Woodlawn, didn't you, just the other day? A. Woodlawn has been one fare for a long time.

Q. Lorraine? You voluntarily did that? A. It's a slight distance beyond the city limits.

Q. Now Mr. Emmons, isn't it a fact, don't you believe it's a fact that if good service had been given to Halethorpe twenty years ago that you gave to other communities, and the same rate, that Halethorpe would have been just as densely populated as those communities? A. I have never heard of any actual complaint of service out there.

Q. You never heard of the one-man cars? A. Surely we have, and we did that to try to reduce this loss of $12,000 in a year.

Q. You never heard of the fact that we always had a transfer up until this re-zoning matter? A. We did that also to try to reduce these losses.

Q. I am glad you did because it's a good thing for the community. But isn't it a fact, and don't you know it's a fact that where you give one community a single fare and another community the same distance from the center of the city a better fare that that single fare community has, as a matter of fact, always grown up faster? A. No, I think there are a lot of single fare districts that haven't grown up as fast as that.

Q. Where? A. Lakeside hasn't grown very fast since the single fare out there. Woodlawn hasn't grown very fast since the single fare out there. Lorraine hasn't grown very fast.

Q. How long have they had it? A. Woodlawn has had it for several years.

Q. You mean that isn't a developed section out at Woodlawn? A. Not at Woodlawn. There is around Gwynn Oak Park.

Q. Practically the same location, aren't they? A. About a mile apart or a half a mile.

Q. Over a period of twenty years, don't you know that the developments along the Harford Road and Belair Road before annexation, when you went out in that section before annexation where you still go now, practically I believe there has been a little extension to Taylor Avenue on the Harford Road line, but that country at that time was the same trucking section when the Railway Company went out there and gave a single fare when Halethorpe was a trucking section? A. That may be so, I don't know.

Q. And that it's all built up now along the Philadelphia Road? A. No, there is quite a lot of vacant property out there.

Q. Of course you can't build up every foot.

(The Chairman) How long will you be, Senator?

(Mr. Benson) It all depends on the witness.

(The Witness) I will try to finish with you, Senator, because it looks to me the questions of facts is before the Commission, the question of discrimination is a question that the lawyers will argue with you, and all I can say is there are two ways to stop that discrimination if there is such.

Q. Mr. Emmons, I think we can get along very much easier if you will answer what seems to me to be the obvious question. You have made the statement that 75% of the public are using your railway? A. Yes, sir.

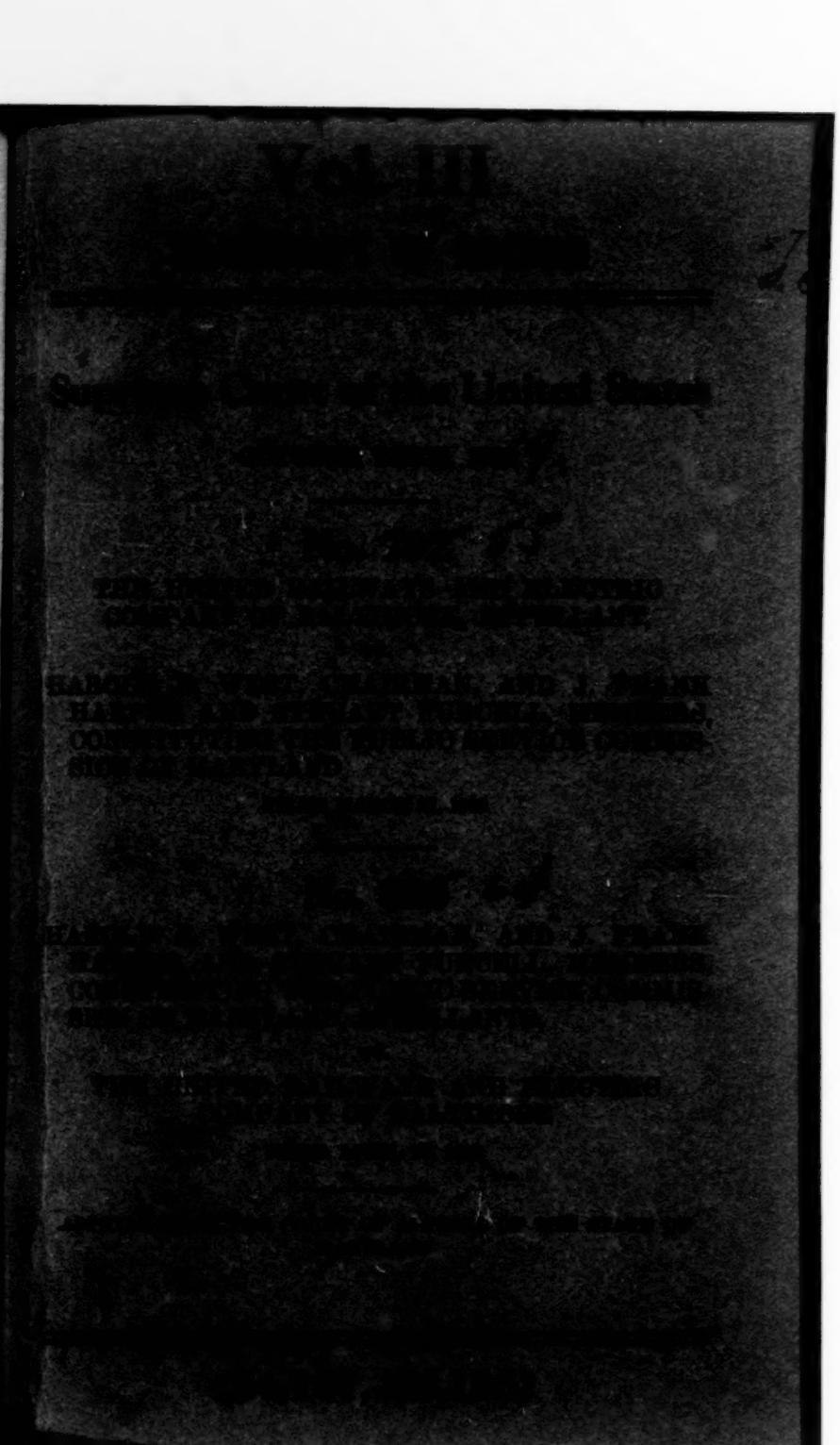
Q. Now if that is so isn't it essential to the development of any suburban section that it have as good facilities to be able to sell at competitive times such as this as the other people have who are in competition with them and under similar circumstances and distances? A. Well, the answer to that would be yes with the qualification that you can go out Edmondson Avenue and Frederick Road in the second fare zones and you see developments out there.

Q. Yes, you see them out Halethorpe, don't you? A. Yes.

Q. What do you think is going to be the effect on Halethorpe if you make a 20c fare out there? A. No worse than the effect on these other roads.

(Examination suspended.)

NOTE: The Commission then adjourned for the purpose of taking a recess.



(33,773, 33,774)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 464

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, APPELLANT,

vs.

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND.

No. 465

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND, APPELLANTS,

vs.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE.

APPEALS FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND

VOL. III

INDEX

	Page
Testimony of C. D. Emmons (continued)	773
Bancroft Hill	784
Luther R. Nash	836

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPT. 24, 1928

		Page
Testimony of	W. Findlay Downs	857
	Bancroft Hill	874
	H. Carl Wolf	881
	Charles Nodder	929
	H. Carl Wolf	974
	Charles Nodder	1019
	John O. Benson	1052
	Howard J. Geyer	1078
	Christopher R. Waltenscheidt	1081
	G. Judd Stevens	1082
	Emory A. Keibaugh	1083
	Oregon R. Bensen, Jr	1085
	Robert Thomas Alinson	1086
	Joshua S. Hull	1088
	Mrs. J. W. Wilson	1090
	Howard T. Dyott	1092
	Charles C. Rittenhouse	1093
	J. Henry Strohmeyer	1095
	Mrs. William H. Trescott	1098
	Mrs. Agnes Stromberg	1100
	Mrs. J. O'Donnell	1101
	C. D. Emmons	1104
	James C. Fenhagen	1142
	Dr. Jacob H. Hollander	1161
	C. D. Emmons	1202
	H. Carl Wolf	1247
Evidence from records in former cases before Public Service Commission		1253
Testimony of	Allen G. Hoyt	1253
	Testimony of Fred S. Burroughs	1334

VOLUME III

TRANSCRIPT OF RECORD

FROM THE

CIRCUIT COURT NO. 2 OF BALTIMORE CITY

IN THE CASE OF

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

VS.

HAROLD E. WEST ET AL.,

TO THE

COURT OF APPEALS OF MARYLAND.

THOMAS J. TINGLEY,
RAYMOND S. WILLIAMS,
For Appellants.

HENRY H. WATERS,
VENABLE, BAETJER & HOWARD,
HAMAN, COOK, CHESNUT & MARKELL,
JOS. C. FRANCE,
For Appellee.

EIGHTH DAY (CONTINUED.)

AFTER RECESS.

Thereupon—

C. D. EMMONS,

a witness of lawful age, produced on behalf of the applicant, having heretofore been duly sworn according to law and whose examination was suspended for the purpose of taking a recess, resumed the stand, was examined and testified as follows:

CROSS-EXAMINATION (Continued).

By Mr. Benson:

Q. Mr. Emmons, by neither the Railroad Company nor by the Commission has there been heretofore any attempt to standardize what would be a fair haul from the center of the city has there? A. Not as regards distance is concerned, no.

Q. Wouldn't it be very much better for you if a reasonable distance from the center of the city were established as the fair distance to haul for the first zone? A. If you are getting into a zoning I would say no, because of the difficulty of fare collections.

Q. How can you then comply with the law, and I am going to read it again to you, because you understand it, I am not asking you to differentiate or tell me the different kinds of prejudices or disadvantages, but the law says that no common carrier shall subject any particular person or corporation or locality or any particular description of traffic to any prejudice, not to any particular kind, but to any prejudice or disadvantage in any respect whatsoever. How can you avoid any prejudice to a locality or a community if you don't establish some basis for what is a reasonable haud.

Q. Well, that's a very difficult question, but if you are going to take the length of haul as the measure, you can complicate it so that it becomes an absolutely not only

impossibility but an absurdity if you would try to measure by blocks or by half miles or something like that; if you are going to Union Station one thing, out to Guilford another, or out to Roland Park another, that gets to a position where it makes it an impossibility to make the fare.

(The Chairman) What law was that?

(Mr. Benson) That's the Public Service Commission law. I am quoting the exact language of the law.

(Mr. Markell) Of course prejudices doesn't mean any mathematical inequality. It means unfair discrimination. It's a pure question of law that he is asking the witness.

Q. Do you think there is no prejudice or disadvantage or unfair discrimination for haul on the Pikesville line from Turnpike to the center of the city, eleven and seven-eight miles for two fares of the same value and to haul to haul to Halethorpe six and a quarter miles for two fares of the same value? A. Well, Senator, it seems to me that you have just of course given the utmost of what is the apparent discrimination.

Q. I ask you to answer that question? A. All right. Yes, if you want me to say yes. If you go out the Turnpike, yes, but you come this side of Turnpike and its quite different. You go to the very extreme limit of the second fare zone, and the longest line we have.

Q. The Turnpike is unfair discrimination, isn't it? A. No, it isn't unfair discrimination. It's a question of how these fare zones have been built up.

Q. It's not unfair to haul people 11 and 7/8 miles for the same fare you haul 6 and 1/4 miles, other conditions being the same? A. It's a practical matter. Where can you stop in that sort of thing. Of course, you are hauling them longer on that line than you are hauling them on Halethorpe.

Q. Don't you know as a matter of fact that this law was taken from the Inter-State Commerce law and that that would be considered a discrimination and has always been considered a discrimination?

(Mr. Markell) Nothing of the kind.

(Mr. Howard) Nothing of the kind.

(Mr. Benson) It isn't discrimination to haul twice as far for the same money?

(Mr. Markell) Of course it isn't.

(Mr. Howard) The very fare zone shows that. One man may go three blocks and the other man may go a mile.

Q. Then you don't know that is discrimination? A. It seems to me the entire circumstances must be apparent to the Commission.

Q. Now please explain to the Commission what circumstances there are on the Reisterstown Road that will justify you to haul people 11⅞ miles and hauling them out to Halethorpe for 6¼ miles for the same money? A. The only circumstance is that the city fare takes you to the city limits. Then you have to have a fare outside of the city limits for the first zone. Now you have taken the extreme limit of the first zone on the Emory Grove line.

Q. And the extreme limit on the Halethorpe line? A. Yes. Now you come into Pikesville and you are not as far out beyond the city limits as you are at Halethorpe, so it seems to me its just a matter of practical use.

Q. Now explain to me why and when, if that's the idea, that the city limits give you any right to charge people by the city limits? A. I think in the previous case, and I think I have always testified the city limits seems to be the limit of the first fare, which gives you the advantage of every line in the city by use of transfers. If you only ride a block its one fare. If you only ride from one corner of the city to another, its one fare. That's the American method of street railway fares.

Q. Now, Mr. Emmons, you know the city limits was not extended as far out in the direction of Halethorpe as it was in other sections of the city? A. There is a slice there that keeps Halethorpe out in the county.

Q. Suppose there had been no extension out there? A. How do you mean no extension?

Q. In that direction. Suppose there had been no extension in that direction, would you have still said that with the city limits way back there it was at Union Avenue that you should have made that the limit of your first fare zone? A. I think it would have still been true, Senator.

Q. No matter if it were only a half a mile in the city? A. May have been only two blocks. I think the city limits would have been the ruling point.

Q. But now in special favored cases, you violated that, like Dundalk? A. The Dundalk line is very different from the Halethorpe line. Our Sparrows Point line has always been a profitable line.

Q. And the Lorraine Cemetery line? A. That certainly is not profitable.

Q. But you violated it in that case? A. I say to equalize it, put something on the Lorraine line.

Q. If there is anything to be equalized then there has been a preference? A. No.

Q. Will you tell me whether there has been or not a preference to the citizens around Lorraine Cemetery? A. The Lorraine Cemetery people are about a half a mile beyond the city limits, and the Halethorpe people are about two miles beyond the city limits. Now there is someplace that the line has to be drawn.

Q. And you voluntarily took over this line for nothing and extended 2.36 miles while part of it in the city true, for one fare, didn't you? A. We took it over, yes.

Q. And for one fare? A. Yes.

Q. And you agreed to do it? A. We had the line given to us for that purpose.

Q. And because you got it for nothing you are giving these people that preference? A. That isn't the reason we give the people that preference, but just because there is not in our judgment a sufficient amount of line

outside of the city limits to put another fare on. There must be some limit.

Q. How about the Woodlawn line? A. It's about the same thing as Lorraine.

Q. It's a mile, isn't it? A. No, it doesn't look half a mile here.

Q. Isn't it a mile? A. I don't think it is. No, I am quite sure it isn't. It's not over half a mile.

Q. Beyond the city limits? A. Yes.

Q. Now before the city was extended how far did your fare go on the Woodlawn line, single fare? A. Gwynn Oak Junction. I think it was Gwynn Oak Junction. That was beyond the old city limits.

Q. That was beyond the old city limits? A. Yes.

Q. That extended beyond the old city limits before the city limits were extended, didn't it? A. Yes.

Q. I am talking about the Woodlawn line beyond the city line? A. At the present time?

Q. Yes? A. About a half a mile.

Q. Only half a mile? A. That's the way it looks on the map here.

Q. I thought you told me Woodlawn was a mile beyond Gwynn Oak? A. I didn't say Gwynn Oak Park. From Gwynn Oak Junction it's more than a mile.

Q. How far is it beyond Gwynn Oak Park? A. About half a mile.

Q. Didn't you say a mile this morning? A. The way I put it I think was half a mile or a mile. I didn't know exactly what the distance was. I think I said half a mile or a mile, Senator.

Q. Well now, the eleven lines shown on our Exhibit B, which was filed in the other case, which you have a copy of, shows an average excess of 57% more mileage on those lines for one fare than there is on the Halethorpe line for one fare? A. I think that's right. You

measure the route of the line rather than from the center of the city.

Q. No, I measure from the center of the city? A. Yes, but you follow the route of the car.

Q. Yes. And the average excess of the eleven lines shows that they get 10% average excess haul more on those lines than the Halethorpe line does for two? A. I haven't checked it, but I presume that's correct.

Q. And still you think that there was no prejudice or disadvantage, no disadvantage to the people of Halethorpe in that condition whatsoever? A. I say that there is no prejudice particularly against them. There might be some disadvantage like there is a disadvantage to the people living out Frederick Road and Edmondson Ave. where there are two fares.

Q. You know Frederick Road and Edmondson Avenue all go further from the center of the city on one fare? A. well, would it make any difference to you whether this line went on down to Washington for instance?

Q. Not a particle, but the fare would make a difference if you charged me for the distance to Washington to Halethorpe. A. But suppose you went a mile further and you were still in the one fare zone.

Q. There is no relation whatsoever between the shortness of the city haul and the shortness of the county haul? A. Not to my mind, no.

Q. I congratulate you. Now will you explain to me any reason why the people of Lakeside should have the privilege of riding 7¼ miles for one fare as against Halethorpe's 6¼ miles for two fares? A. The people of Lakeside are about one-third of a mile beyond the city limits. The people of Halethorpe are two miles beyond the city limits.

Q. Then it all should be with reference to the city limits? A. I have said so very often.

Q. Now why do you give Dundalk Junction a mile and a half? Why shouldn't you give Pikesville one fare if you are measuring from the city limits? A. That is a

condition I explained this morning. It's also on a paying line.

Q. Why shouldn't you, if you give Dundalk a mile and a half beyond the city limits, why shouldn't you give Pikesville a mile and a half beyond the city limits for one fare? A. I can hear you and I will try to explain it again. At Dundalk Junction there are two lines cut together. Riverview Park is on one line, Dundalk is on the other, and if the Dundalk people could not get a transfer there they would have to ride to 15th Street to get a transfer and it was more for the convenience of those people to keep them from riding around what we would say a Robin Hood.

Q. And the people of Dundalk get that advantage? A. They do, yes.

Q. Why don't you give the same advantage to the people of Pikesville? You extend a mile to Woodlawn beyond the city or half a mile as you say. Why don't you extend half a mile across to Pikesville? A. Now Senator it seems to me if there is any question about the extensions beyond the city limits at all, the real answer is the definite cutting off of the fare beyond the city limits and charging these other people then an extra fare.

Q. If that's why you don't extend to Pikesville that half a mile—— A. I say they are different situations and we cannot keep on extending beyond the city limits. We cannot do it.

(The Chairman) I might say for Senator Benson's information, something that Mr. Emmons is loathe to say; that that extension to Dundalk Junction was ordered by the Commission in the 7½c fare case.

(Mr. Markell) The Dundalk extension is vastly different from almost all these others in that there is some money it it.

Q. Mr. Emmons I notice on one of your exhibits that you have a special rate from Highlandtown to Sparrows Point. What is that rate? A. That's the Bethlehem Steel ticket. Its two five-cent tickets.

Q. That's a special arrangement? A. Special rate to the Bethlehem Steel.

Q. For the benefit of Sparrows Point? A. For the benefit of the workers in Sparrows Point.

Q. Now Mr. Emmons, you have made the statement several times that one way of handling this thing is to cut down zones, haven't you? A. Cut down zones.

Q. Yes? A. I did say that at one time that we had in mind using the city limits always, as the measure of the first fare, always as the measure of the first fare.

Q. That's just one thing I want to ask you about. What has Baltimore County done to the United Railways that makes you want to discriminate against it when it it the same distance from the center of the city in the county as it is in the city? A. Not a thing.

Q. They haven't overtaxed you, have they? A. Not a thing.

Q. You don't have to pay any Park Tax out there, do you? A. No, it's not in the city.

Q. Your running conditions are better at Halethorpe, because you have private right of way? A. Yes. We still lose money, even with the private right of way.

Q. Is that the only line you lose money on? A. No.

Q. If you were you wouldn't be here A. No.

(Mr. Markell) It certainly is not business to lose money on it.

Q. How about the other end of the line. Isn't that one of the most profitable lines? A. Since the change of the routing to the No. 3.

Q. Yes? A. We did put it on a good line, yes.

Q. And largely because it met with the Halethorpe line? A. Oh, no.

Q. It don't bring carloads full to the Halethorpe Terminal? A. It did during the Fair of the Iron Horse, but it does not now.

Q. Mornings and evenings? A. We wouldn't be showing a loss then.

Q. You mean to say those cars are not well filled? A. There may be some couple of trips, but you take all day long and you will see it's a very sparsely line.

Q. Worse than any of your city lines? A. Worse than any of our city lines, yes. When you asked me about lines that didn't pay, I thought you meant county lines.

Q. How about our friend Mr. Clark's line? How does it compare with that? A. That's a poor brother.

Q. Now why is it you want to favor Mr. Clark? Is it because he is better looking or anything of the kind? A. That may be the reason, but I think not.

Q. But you have favored him, haven't you? A. No, not particularly.

Q. You don't think you have? A. No.

Q. You are not sincere in that statement? A. Yes, I am, because I have in mind the city limits all the time.

Q. But you didn't have to take the line over at all? A. If you had been in my place, for several years, I think you would have taken it over too. That's about all I can say.

(The Chairman) I will say this for Senator Benson's benefit also, a matter that Mr. Emmons doesn't care to go into, that line was taken over largely upon the insistence of this Commission.

(Mr. Benson) Mr. Chairman, I am in earnest in this case as I guess you will realize. If I have been to abrupt to Mr. Emmons of holding him responsible for conditions here I would like to apologize to him, but I want to say to the Commission right now that I am in this case not for what Mr. Emmons has done wrong, but I am in this case to have the Commission remedy what they have done and give us what we are entitled to in my judgment under the law, and that is that no preference shall be given either by Mr. Emmons or this Commission, and the fact that this Commission insisted upon the extension

to Dundalk, if that is permitted to stand, then we contend that we are legally entitled to one fare to Halethorpe.

Now, I just want to make myself clear on this point. It isn't intended as any reflection upon Mr. Emmons or any reflection upon the Commission, but I do want to call attention to just what I am trying to bring out, and that is there has been no scientific method. We have gone first one place under pressure as you just admitted, under pressure whether by the Commission or Mr. Clark or who, you took over a railroad that was not paying and extended it two miles and thirty-two one hundredths, but that puts the Halethorpe communities at that disadvantage just the same.

(Mr. Markell) There is no scientific method.

(Mr. Benson) Maybe not, but I think there will be one a whole lot closer to scientific than——

(Mr. Markell) There won't be any extension to an unprofitable line because the Commission extended a profitable one to Dundalk. No Court on earth will extend any such line as that.

Q. Now, Mr. Emmons, just one more thing for the record. The Halethorpe Line has the short haul from the center of the city for one fare and the shortest line in the county, with the exception of one line, isn't that correct, on its second fare zone and that the Taylor Avenue line? A. The statement looks correct as to inside the city. Now will you ask me the other.

Q. Outside the city I say the only line that has the shortest haul on its second fare is the No. 19 line? A. You mean in total length?

Q. No, the total second fare haul. A. Of course, yours goes to the end of your line. The Harford Road line is 1.71 as against your 1.94 going to the end of the line.

Q. What is the Harford Road line? A. 1.71 to Carney on the second fare. Towson is 2.15, just about the same. Not much difference.

Q. I have two and one-eighth. A. That's about right.

Those three lines are just about the same as far as second zones are concerned.

Q. But all of them have the first zone longer? A. The other two have the first zone longer.

Q. Every other line out of Baltimore? A. That's right.

Q. Materially longer? A. Well not materially longer.

Q. Well the Halethorpe line is four and three-eighths miles about from the center of the city? A. You don't measure from the center of the City. We do.

Q. I am measuring from the only center that we can get to. A. If you measure from the real center of the City it makes a difference. If you go out to where the No. 3 line turns off that's Baltimore and Howard.

Q. That's as close to the center as I can get to the line. A. Howard to Charles is quite a distance.

Q. But I have taken all the other lines the same way. Some Baltimore and Calvert Street and some Saratoga and Howard? A. If you take Baltimore and Charles as the center, as we have, you will find that the Middle River and Dundalk lines and the Frederick Road and Edmondson Avenue lines are not much longer. They are a little bit longer, but not much longer than your line.

Q. The Middle River line we took at Fayette and Holliday Streets. A. I know, but if you take from Baltimore and Charles, according to this it is——

Q. Holliday Street is further east than you are taking it from. A. You have taken the route and I am taking the concentric circles here. Your measurements are probably more correct than mine are here.

Q. Thank you for that much. That's all.

(Examination concluded.)

(Mr. Newman Lowenberg) Can I ask Mr. Emmons a few personal questions?

(The Chairman) No, sir, you can not. The public is

represented by Mr. Tingley and Mr. Clark and Mr. Toole and by the Assistant City Solicitor. Any questions that you may have that you wish to have asked you could have submitted to those gentlemen, and if any one of them chose to ask the questions they would have done it. We have decided to limit the examination of witnesses only to the attorneys in the case.

(Mr. Lowenberg) Mr. Chairman, in fact I have a letter which I received from the United Railways, and I don't think the information I have received has ever come up, and that is why I would like to ask a few questions and that is why I came here for that purpose.

(The Chairman) If it is a matter which the attorneys representing the people thought was a proper matter to bring before the Commission they would have brought it. We regret that we can't permit any indiscriminate questioning of witnesses.

(Mr. Lowenberg) Mr. Chairman I want to apologize to you, but as a citizen I think I ought to be entitled to ask a few questions.

(The Chairman) The citizens are represented by Mr. Tingley as a whole.

Thereupon—

BANCROFT HILL,

a witness of lawful age, produced on behalf of the Applicant, having first been duly sworn according to law was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Howard:

Q. Mr. Hill, would you tell the Commission who you are and what your occupation is and has been? A. I am a graduate of the Massachusetts Institute of Technology. I have served five years as President of the Harbor Board of Baltimore, as Harbor Engineer, four years as Engineer of the Port Development Commission, I have been Consulting Engineer and Valuation Engineer for the United Railways for the last three and a half years.

Q. I believe you testified in the Valuation Case the record of which has been made a part of the record in this case, didn't you? A. I did, sir.

(Mr. Tingley) In the course of that case didn't you admit that you were not an expert?

(The Witness) I claimed it, sir. I didn't admit it. I claimed it.

Q. Mr. Hill I want to first ask you about an exhibit that was filed by Mr. Emmons by which he brought up to date the valuation of $70,000,000 that was fixed by the Commission, including the $7,000,000 of easements which is as yet undetermined, and he said that you had worked on that exhibit? A. I did.

Q. What is the number of that exhibit? A. Exhibit No. 23.

Q. Have you got it before you? A. I have.

Q. Is there anything in addition to what Mr. Emmons said that you would like to add to his explanation of how that was made up? A. No, simply to state very generally how it was done. In the first place as a general principal we took out of the valuation in 1924 all of the things which had disappeared through any cause whatever that we knew of at the prices of the valuation. That was done by, in case of track, for instance, by finding three typical sections of track, paved City tangent track, unpaved City track, and by tangent I mean straight track, and by tangent open track in the country such as out on Reisterstown Road, and in finding the amounts of those that had been withdrawn, and taking them away from the valuation. To do that we reduced our prices, which were the only detailed prices we had available in many cases, by the percentage which the Commission's whole value given us in any one account bore to what we had claimed. In other words, if we claimed a dollar and the Commission gave us 95 cents we reduced any unit in that dollar by 5%.

Then we had to figure the special work retirements. The special work, each one of them has to be figured separately because special work is just what its name implies, it is a special layout in any situation, and we

had figured the track that had gone out through abandonment by the same method, and we had the Power Department figure at their prices, the various elements in the valuation which had gone out such as overhead work, underground conduits, new substation equipment and that sort of thing, and cars were treated in the same way. The cars that had gone out were taken out at the valuation prices. The equipment that had gone out was taken out at the valuation prices, and also about $30,000 worth of more or less small things that were on the books as having gone out which were not charged to any account, such as 13 horses in 1924. We just simply took them out, all of those things in one list.

Then that took from the valuation those things which had been retired. They were taken out at 100% of their value as the Commission gave it to us. They were not taken out at 85% which of course would have increased our valuation today; they were taken out at 100%. They were then, to make up the valuation, we believed the most satisfactory thing to do was to take the actual cash cost without any overhead whatever that the Company's books showed for new construction out of depreciation or out of new capital, because under the theory that the Company's books were kept of course these things were made good about half and half, and we checked the result of the million dollars also very closely by finding out what had actually been added to the plant. For instance, there were four automatic substations which cost altogether, land, buildings, and equipment, about $600,000, and there is a very steady increase in track. The track that goes in was heavier than the track that came out, and by that we get a fair check on what we had done and that is how it was done.

Q. Then to see if I understand it right this exhibit is not based on your book entries of retirements and new acquisitions? A. No, it is based not on book entries, but also anything that got on the books, which by any chance we didn't have in the valuation, those few small things were put in.

Q. What I want to make clear though is this; that your retirements here are all taken off on the basis of the Commission's valuation? A. They are.

Q. And not on the cost basis? A. That's right.

Q. And does that change work against the Company or in favor of the Company if we consider that preserving a high valuation is in favor of the Company? A. It works against the Company.

Q. And then in the second place all of those items that you took off, you took off not at the 85% depreciation value that the Commission had put on them but at the 100% 1924 value? A. 100% value, yes, sir.

Q. And that also worked against the Company? A. It did.

Q. And then again you, in adding new property, there has been more new property added than has been property gone out? A. There has.

Q. You eliminated in both cases the overhead? A. I did.

Q. So when property goes out you didn't consider any proportion of the general overhead going out with it and the property that came in you didn't count the overhead? A. I did not.

Q. And all of that makes a difference of about how much in the net increase in value as shown by this exhibit and the exhibits which were used in the emergency hearing which I believe were based on that method in which these transactions had been booked? A. I can give you my part of that. We have an addition under this method of $1,005,270.00.

(Mr. Markell) The exhibit shows two and a half million.

Q. So this exhibit is your work mainly? A. That exhibit is my work.

Q. And your object has been to fairly bring up to the present date what you understand to be the January 1, 1924 value? A. It is.

Q. I think some comment was made in the cross-examination of Mr. Emmons about allowances for further accrued depreciation since January 1, 1924. Would you

explain to the Commission whether there is any occasion for that? A. We did take out of the valuation of 1924 all of the obsolete property we had at that time; whether we had it on the books or not it made no difference. There were, as I remember, about three million dollars worth of cars that were not presented at all at present day value. There was $300,000 worth of track taken out after the schedules had been checked and the inventory was in. It was considered by the Commission, at least it was conceded by us at the time, that that track was not being used, was obsolete, and was taken out. About $300,000 of it.

(Commissioner Harper) And not included in the $70,000,000 valuation?

(The Witness) No sir, it's not in there. The cars were not. There were other things. Bay Shore Power House for instance. We tried to present only the live stuff that we had and I don't think we got anything in that wasn't.

Now the rest of the property has been maintained by this maintenance. We still have it. We still have it in certainly as good operating condition as we had it then.

Q. It's been fed with new material too hasn't it? A. It has been fed in with this million five construction of new material, without any overheads on it.

Q. So is or is not the present condition of the property, so far as any accrued depreciation is concerned, as good as it was as of the date of the Commission's valuation? A. I would say it was sir.

Q. Now Mr. Hill you said that you were a valuation engineer for the United, is that right? A. Yes, sir.

Q. Have you made a special study of the question of what would be a proper retirement allowance for the United Railways and Electric Company, that is to say, an allowance intended in the long run to replace property that in one form or another is either used up or become obsolete in the public service and has to be retired? Have you made any calculations showing from the experience of the Company or otherwise what is or what ought to be a proper annual allowance for that pur-

pose? A. I have. I have made an analysis based on the Company's experience, experience of the Company's department heads——

Q. Before you come to the details of it let me ask you this. What is the figure that you find would be a proper annual allowance for that purpose? A. About $2,200,000.

Q. Now will you in your own way explain to the Commission how your work was done by which you ascertained from the Company's records what approximately ought to be the allowance for that? First of all you gave a copy of your report on the subject this morning to Mr. Tingley, didn't you? A. I did this morning, yes.

(Mr. Howard) I think you better file a copy with the Stenographer.

NOTE: Report above referred to is here filed in evidence and marked Applicant's Exhibit No. 25.

Q. Now Mr. Hill what was the object you set before yourself in this investigation and how did you try to arrive at it? A. I have endeavored by analysis of the Company's history, as far as it was available, and by any other information which I could get of similar character, to arrive at that sum of money which under present day conditions would maintain the plant as valued by the Commission and any additions thereto that might be made from time to time, simply to keep what we already had, not to build up any reserve except that we know that retirements in all classes of property of this kind will vary a little from one year to another although being fairly constant over a long term of years. I had in mind no other reserve, and it is not attempted to build up any reserve of that kind. It is attempted to arrive at that sum of money which over a period of time will take care of the replacements of the property at the present day prices.

Q. Now that was your object then; to ascertain that amount? A. Yes, sir.

Q. Now tell the Commission how you went about it and what were the considerations that you kept in view? A. There were three methods of arriving at this result, all

of which fairly well check each other. In the first place, and one of the best is the general history of transportation in this City. If we stand today, we got a plant that is performing its functions we think 100%, certainly it's performing all of them of any necessity as far as the plant itself is concerned, if we stand today and look forward we don't see any changes to amount to anything in that plant. The cars are well maintained. The track is being kept up, and we could go on perhaps forever with what we have, but if we look back we find three very distinct systems in transportation that have come up and passed away through obsolescence alone. You had about 32 years of the horse car system which in its days was the only thing known and was supposed to last forever by the people of that day apparently since they set aside at that time nothing to take care of it when it was gone. You have that supplanted by the cable system. When the cable system was first opened in this City the people that put it in hailed it as the greatest benefactor to the City that had been known for a long time, even all the newspapers blowing and praising them. The first cable car that was delivered had three oil lamps. They were very particularly praised because they had three oil lamps in them, and the system is probably the most expensive, relatively, of any of the three that was put in.

We have that supplanted by the old hand brake single truck open and closed car, sometimes double truck, but the double truck open car has gone long ago, operating on cobble streets, dirt ballasted, tram girder rail, rail that was particularly built to carry horse drawn vehicles across cobble stones. That also has almost entirely gone. It's a very interesting thing that in the valuation 10 per cent. of the City tangent track, straight track, was an old dirt ballasted tram girder rail. In the three years that have passed, out of the retirements, 40 per cent. were track retirements, that showed a change due to obsolecence of about 5 per cent. a year. If you had ever set up such a charge——

Q. That would just be obsolescence alone? A. Obsolescence alone.

Q. From that quarter? A. And it's obsolescence alone

of the depreciable property. In some cases it's obsolescence of more than the depreciable property.

Now with that you have 3 per cent., 14 per cent. and 5 per cent., and it would seem——

(Mr. Clark) What do you mean by that?

(The Witness) Rates of retirement. You had 32 years, which gives you about 3 per cent. of obsolescence if you consider obsolescence going on at an even rate.

(Mr. Clark) But you said 5 per cent. obsolescence and then you said 3 per cent. and 14 per cent. What are they?

(The Witness) 3 per cent. for the original horse cars, 14 per cent. for the cable road, the most expensive of the crowd, and 5 per cent. for the old hand brake car on tram girder dirt ballasted track with steam power and steam substation. The old Pratt Street Substation has gone out. Not a thing in the valuation for it. A lot of steam substations are all gone. Only one of them exists and that is this old one out at Emory Grove.

Q. You divided the history into those stages? A. If you add them up Mr. Clark you get an average rate of about 7½ per cent. I would say that 5 per cent. would certainly be justified by that history.

(Mr. Clark) Then that 5 per cent. is used as an average from these other figures?

(The Witness) That's right.

(Mr. Markell) Average of averages.

(The Witness) And that's absolute history. If you are going to say anything about that you are going to say that you stand today in a position that nobody stood in before; that we will never have another change. Although we don't see it, they didn't see it then, they certainly didn't come down and build those cable roads and within seven years run them out of town, the very people that praised them as being the saviors of the City were the very people that wanted to run them out. Then that was one phase of the situation. That's one method of getting at a general figure for replacements. I should say that that would justify at least 5 per cent.

Q. That's obsolescence alone, too? A. That's obsolescence alone, and obsolescence is a very large part of this thing. It occurs almost instantaneously in many cases, but that's no reason for not trying to provide for something for it.

Now from that I pass to a consideration of the individual items of property such as track to start with. In track there are seven accounts. They start with grading and they end up with paving.

Q. How important a part of the total depreciable property is track? A. Track represents about 40 per cent. It represents about $20,000,000 in $53,000,000.

NOTE: The Commission then adjourned for the purpose of taking a short recess.

AFTER SHORT RECESS.

DIRECT EXAMINATION.
(Continued).

By Mr. Howard:

Q. So one special subject of your investigation was this of track? A. Yes, sir.

Q. Will you proceed and tell the Commission what you did and what you found?

(Mr. Clark) May I interrupt you one minute? You spoke of three methods of getting at the amount that you need, and one was obsolescence. Now you are going to start the second one?

(The Witness) One was entirely obsolescense. One was to consider the history of the business as a whole, transportation as a whole. I finished that. Now I am starting to take the individual units that go to make up this property and give you what history we have in the last few years running from eight or nine to twenty or thirty as the facts were available.

(Mr. Clark) In other words, depreciation.

(The Witness) Mr. Clark, most of it is obsolescence. It surprised me when I went into it.

Q. And in order to anticipate and also to gratify Mr. Clark the third method will be what? A. The third method will be to see what general companies we can get the data on, and it's rather hard to get because their methods differ from one another, that substantiate that same figure of from four to five per cent.

Now if you gentlemen will turn to page 4 in this report of mine to Mr. Emmons you will find there a list or the first part of a list of abandonded track that's been abandoned and removed.

Q. Over what period? A. In the last nine years with the single feet of track on it. Page 5 is a continuation of it. There is twenty miles and thirty-one hundredths of track that's been abandoned in nine years time and removed. That will be at the rate of about 2¼ miles a year.

It may occur to you to wonder whether that condition will continue, and when it does you must remember that this period is after this Company has been organized and operating as a unit twenty years or more and the record is for nine years. You have got an example of it right down here at Hanover Street. There will be a whole lot of track will pass out through obsolescence when the Hanover Street Viaduct is built. There was track on the Mt. Washington Bridge passed out the same way. It's not in here because this is only up to 1926 inclusive. That is 2¼ miles a year on 405 miles of track.

Q. And does that include track replaced, track taken up because it's worn and replaced? A. No, sir, that is track that's abandoned. It's gone.

Q. That's a separate item then? A. That's another item. In this case it is possible to separate straight obsolesence from the termination of track where it is reconstructed. In this case it's possible to do it. In that case of course it's all obsolescence.

Now that takes out all of the track except the car house, storage yard and loop, track which is quite expensive track, because if you will think of it a minute, you will realize there is an enormous amount of special

work in these car houses. That goes out with the car house, that track, it does not go out thru the ordinary abandonment or rerouting and it will carry a heavier rate, probably will carry a rate of 2½%. If you weigh those two, the two and a quarter miles on the four hundred and five miles and the two and a half per cent on the 29 miles, you get a weighted average rate of retirement thru obsolescence, over the last nine years of seven tenths of one per cent. and if you apply that to the value of $20,025,900——

Q. The value of track that is? A. The value of track valuation. You have an item of $140,200.00 a year. Now that is obsolescence.

In the last eight years there were rebuilt an annual average of 12.47 miles of paved track and 4.01 miles of open tee rail as shown in the chart which follows page 5.

Q. Now you are coming to the other feature, the feature of reconstruction? A. Termination because of reconstruction. That track as it was weighted in the valuation was worth about two to one, that is the paved city track was worth about twice the open tee rail in the houses. We used that to get a weighted retirement in that ratio, without in this case county grading which we do not consider here to depreciate altho there is a small depreciation generally given to it.

Now on page 7, you will find a credit there of 66 2-3% which is not renewed. That's rather a generous credit because we don't generally find that much ballast that we can keep, but we put it in two thirds of the ballast, and we figure that 60% of the grading must be done over again. That is you don't have to dig the space that the ballast occupies and the dirt is carted away to a dump. You do have to break up an increasing amount of concrete base, of paving which grows more expensive as the dirt goes out. There is also a credit of somewhat less than 50c altho we use 50c for rails. The rail itself is not worth taking out for salvage, but if you have got to open track up and take it up, you have got it and you can get somewhere between 30 and 50c use out of it. Sometimes on open track it may be more, but it's generally less.

Now from that you get a value based on the valuation figure of $47,800 a mile for the city track; $20,900 per mile for the open tee rail. That's an average over a period, includes the paving which in some places will amount to as much as seven or eight dollars a foot alone and includes all special work. Just simply multiplying those miles by those figures you have a retirement charge a year of $679,600.

The engineering department has its own estimate of what their depreciation expenditures are. That's also given on that page. It's just about 13% higher. There is a reason for that, that the class of track that comes out, this is an estimate for next year, which will be five years after the valuation, and the amount of light track taken out grows constantly less as it naturally would. Nevertheless they have a check within 13%

Now account No. 512, roadway machiney and tools.

Q. Are you passing from track now? A. I am passing from track.

Q. What was the figure you got for the passing out of track due to both causes? A. $619,800.

Q. And if I understand you that is your estimate of the average actual retirements of track each year over a period of years in the future? A. It is.

Q. And has nothing to do with any depreciated condition of the track that isn't actually retired? A. Those tracks are actually gone. They are not there and we have taken them out of the valuation.

Q. So a provision of that amount that you have just mentioned, would in your opinion only meet without creating any permanent reserve, would only meet the actual average retirements of that which are to be expected? A. They would. Account No. 512, roadway machinery and tools, is generally given a rate of depreciation for retirement of about 10%, sometimes as high as 15. We have not claimed any allowance for it here because our general practice has been to maintain most of it out of maintenance. That's kept up from time to time and we don't want it here.

Q. So you haven't included it? A. We haven't included it. Now when you come to bridges, tressels and culverts, in the last nine calendar years, there has only been retired one bridge thru obsolescence. That's Bel Air Road. The value in the valuation of that was $12,179, but already in this year we have had Mt. Washington go out at a value of $83,711 and the Mt. Holly at a value of $19,066, making with Bel Air a total of $114,951.00 thru obsolescence alone, with not a question in it of depreciation or wear or anything else.

Q. As a matter of fact was the Mt. Washington viaduct found to be in any present condition in the valuation case? A. The Mt. Washington viaduct was found to be in very good condition. It went out the minute that the Management decided that public policy required that they use the bridge the City built alongside of the one we already had.

Q. Any salvage in the Mt. Washington bridge, that can be used for anything else? A. There may be some salvage in it.

Q. By taking it down? A. But there won't be anything to affect you. If you consider your wear and tear on your bridges, which must take place, you have got nothing there to credit the salvage.

For that reason we believe that, for this very certain reason, uncertain as to amount and time, but perfectly certain it's going to happen and occur, we have placed an allowance of 3% or $38,400.

Crossings, fences, and signs account No. 516 is also considered to be maintained thru maintenance.

Q. In following these accounts, you are following the classification of the depreciable property that was adopted in the valuation? A. Using the classifications and the amounts set up in the valuation.

(Commissioner Harper) In bridges, you covered a period of nine years?

(The Witness) That was just the history. Now in Cars we had more, Senator, but the trouble was when you got back of nine years of track, the track was of such

different construction, and the operation was so different, that the figures, and also the war came in that they figures in that particular thing. We didn't have the records back of that to use and we used nine years as a typical stretch of time.

(Commissioner Harper) Do you mean that the realized obsolescence during this nine year was 9% of the value of the tressels and bridges?

(The Witness) This is obsolescence alone now, there is nothing else in that, and you must put something else in it of course. Yes, it was 9% realized in two years as far as that goes.

(Commissioner Harper) But in the whole period of nine years this was the total obsolescence?

(The Witness) Senator, I believe if I had the records, which I haven't and I can't get, you will very likely find other bridges and structures, that came after them, so ten years or twelve years before wouldn't affect that.

(Commissioner Harper) The only purpose of my question was to ask you how you reached the estimate of 3% as a material allowance.

(The Witness) Because we considered in the valuation, the testimony was about 2% as a depreciation charge, and you remember the afternoon Mr. Pagan was here, and talked on that subject, and this is only adding something to it to try to cover the obsolescence which on track alone is about 7-10ths of one per cent. and a bridge would go out very much the same way.

(Mr. Clark) May I ask a few questions here for information, Mr. Hill?

(The Witness) Yes, sir.

(Mr. Clark) That this Mt. Washington Bridge. I understand that went out and was retired. What took its place.

(The Witness) The City viaduct built right alongside of it?

(Mr. Clark) Who built that?

(The Witness) The city.

(Mr. Clark) You have nothing to do with it?

(The Witness) No.

(Mr. Clark) Now when you speak of obsolescence in the sense in which you are using it here, that is where a piece of property has gone out and you have to replace that with another piece?

(The Witness) No, it's gone out. You have got to have something to balance your capital structure.

(Mr. Clark) That's just a book balance, no hardship on the Company.

(The Witness) What, not to lose its property, that it gets its return on?

(Mr. Clark) If it's given a new piece of property——

(Mr. Markell) We didn't suppose we would be allowed to value that city property as a part of our property.

(Mr. Clark) You mean when you speak of obsolescence, you speak of a piece of property going out that's obsolete and replaced by another piece. Now is that so with respect to Mt. Holly too and Bel Air Road too?

(The Witness) Yes, sir. All our bridges go out that way.

(The Chairman) In other words, you take the bridges, Mt. Washington Bridge, Mt. Holly Bridge and so on, and that becomes obsolete because something better is built right alongside of it which you have the right to use?

(The Witness) We almost have to use it because of public sentiment.

(The Chairman) Well it's to your advantage to use it. While you perhaps have to lay tracks on that bridge and maintain those tracks you avoid the maintenance of the whole structure?

(The Witness) Yes.

(The Chairman) Therefore you are to that extent better off? Now you think that the public ought to pay for

that structure which has become obsolete and withdrawn for service, while at the same time the public is footing the bill for the new structure, which you use?

(The Witness) It's gone out of any rate base. The Company had to put up the money for it. Now you take a car. A car goes out because of public convenience. The cheapest thing in the world to run was the old open car, and whenever a thunder storm came up——

(The Chairman) But you have had to provide something for that in that case. In this case the public provides the structure and allows you to use it.

(Mr. Markell) But if we had to provide something we would get a return on it. It's lost to us and we get no return on this.

(The Chairman) But you are no worse off?

(Mr. Markell) Yes, we lose the return on it.

(Commissioner Harper) You lose that much in the rate base but you probably save something in maintenance?

(Mr. Clark) The rate base is another way of expressing property on which you earn?

(The Witness) That's true.

(Mr. Clark) Now then you have another bridge there that you pay nothing for, and yet get your earnings so far as you get them from the operation of that bridge, just the same as you did the other bridge?

(The Witness) How can we when we haven't got the bridge?

(Mr. Clark) Did you actually charge that $83,711 to depreciation?

(The Witness) We will have to this year.

(Mr. Clark) You have done that, haven't you?

(The Witness) We have got to this year. It's gone.

(Mr. Clark) Do you recommend that?

(The Witness) How can we help it? That element of value is gone from the rate base.

(Mr. Clark) You can't help it, but you shouldn't do it.

(The Witness) Now in account 517, signals and interlocking apparatus, there is an analysis there showing how the signals have gone out. Some of them have gone out, a whole signal system in at least two years. A signal system that was put in on the best advice and the best engineering we could get and became obsolete in two years time, and for that grade of property that was going out at this rate, we have set up a rate of 5% or $7,300.00.

Poles and fixtures, account No. 519, we have three classes of poles. We have the iron poles, wooden poles and the concrete poles. The iron poles have considerably more life in them. They are in first class shape and for them we ask 3% to cover the action of public authorities where we are required to remove poles for curb lines, to cover any catastrophe such as major sleet storms and to cover the ordinary item of retirement.

The wood pole, altho it has a rate of retirement of about eight years, we maintain mostly thru maintenance, the so we only ask for 2% to take care of the ordinary obsolescence where it occurs over a long time and the question of storms and acts of public authorities, which gives a weighted average on poles of 2.8% or $32,900.

In underground conduit lines, there is very little experience of anybody so far. They have not been in use long enough to have any history except the fact that obsolescence because of the change in lead centers, change from steam generation to purchased power, and the orginary wear which must occur in everything we have set up 2% or $4,000.00.

Q. Aren't they burnt out sometimes? A. They are also burnt out.

Q. I have seen it happen? A. Yes. In the distribution system, I won't go into this unless you want, we have a careful analysis of this, which is available and

I shall be glad to go over the amount of retirements that have existed since we have had this sort of property and I have gone into it at some length on pages 13, 14, 15, 16, 17, 18 and 19. There is a summary of it on page 20 in which these rates as found from our experience are applied to the amount of the Commission's net value, less the salvage, which in this case, and it's the only case we have practically there salvage is quite an item, and a salvage of $731,000 estimated in three million and a half, it gives an over-all weighted average of retirement of 7.12% or $252,900 a year.

Q. Now as I understand that like the rest, is based on actual experience? A. That is based on the experience of the Company and the experience of it's Power Department.

Q. And was dug out of the records by you? A. By the officers of the Company for me in this case.

In shops and car houses, we have not had retirements in this class of property from which we can get a rate except to go back to the rate of our general buildings, when there came a change from the horse car to the cable and from the cable to the electric, which in that case ran anywhere from 5 to 14%, and we have asked for an allowance here of 2½% per year to cover that item of $108,700.

The same statement applies to a greater extent in account No. 524, stations, miscellaneous buildings and structures, where there has not been sufficient history in the Company to get an actual retirement rate from our own experience, and we have to use what we consider a conservative reasonable rate of 4%, or $13,400.00.

Q. What does that mean? Mainly buildings or what? A. These stations are waiting stations and things of that kind and are subject to very hard wear and also to being moved due to changes in traffic conditions.

Park and resort property changes quite rapidly. Take for instance the old Lakeside property is gone entirely. There are changes taking place all the time in it, in what you might call the amusement park, it's subject to a very rapid rate of obsolescence, and determination because of

wear and we consider 5% would be a very conservative allowance to take care of that item of $25,500.00.

The other expenditures, way and structures, consist mostly in the trackless trolley. We have put in there that that has already been written off and no allowance was claimed for that.

Q. In other words the trackless trolley didn't work, did it? A. Yes, it worked and I think really technically we are entitled to it, because I remember now it was in the valuation and as it goes out our valuation shrinks. It was probably a mistake that we didn't put it in. But it happened to be off the books and they agreed to pay for it; as I remember, we set up a rate of depreciation on it, because it was so doubtful as to how popular it would be, that it happens to be written off the books.

Q. Now your next item is a very big one? A. The next item is passenger and combination cars and freight and passenger cars and the equipment of them.

Q. What's the total of that in the valuation? A. The total of that item is $18,111,897.00.

Q. So with the exception of track that's very much bigger than any of the items? A. That will take up another 35% of the items and those two give you the 75% which I mention in here on which we are able to reconstruct the history from our own records.

Now if you will turn to page 23 you will find a statement there of the life of our cars, as close as we may come to it from the records.

Q. That's allowing for mortality from all causes whether from wearing out or become obsolete. A. That is principally obsolescence. If they were worn out they were probably maintained thru maintenance, but that's mostly obsolescence.

Q. It's all from their source tho? A. It's the whole story of the car. You have a weighted average life in one thousand and 22 cars of 15.8 years. When we considered that, together for the care that we have now, we felt that a 4% allowance on that would certainly not more than protect that property, if it did that.

Q. Is 4% better or not as good as your experience here? A. The experience here amounts to about 7%. As you will notice there we have retired cars as low as six years. There has been a rate of retirement prior to 1923 of about 56 cars a year. It is very uncertain in its application. If you will notice there there have been periods as high as six years where no cars were retired, there has been a period of four years when no cars were retired, and another period of three, but at the end of those years you see a very heavy retirement. The amount of those cars will be $725,000.

Q. That's 4% on what would be an average 25-year life, while your experience is only 15 and a fraction year life? A. That's right. There may have been in that experience here some cars we still have and therefore we have raised it by about 67%.

Shop equipment is maintained by this Company practically thru maintenance.

Furniture is maintained thru maintenance, and we consider miscellaneous equipment to be maintained thru maintenance. On those accounts it is probably a good practice apparently of other companies to get a rate of anywhere from 5 to 10%.

Q. For depreciation? A. For depreciation and retirement. We have power plant buildings, only power plant now. We have used 2½%, or a forty-year life on it, and there is only $45,500 in that amount. There is a money allowance of $1,100.

Substation buildings falls into the same class as the car houses except that the equipment that it is built to house is commonly superseded more frequently, and we have allowed 3% on the item, or $14,200.00.

Power Plant equipment is the same rate. It's only a small item anyway, $169,000, as the substation buildings and we have allowed 3%, or $5,100.

Q. That power plant is the same plant that account No. 539, power plant buildings, refers to the buildings and houses? A. That's right. Substation equipment in the valuation of 1924, there were 8 manually operated synchronous converted substations. Since that time four more

have been added of the automatic type. Those are the four which I said cost $600,000, and altho the oldest ones have been in service 24 years, we are not able to determine actual rate of retirement, but they will be greatly affected by the changes that affect traffic, because as the necessity for the load distribution centers changes the necessity for this equipment in the place it's in must change too, and on this type of equipment the obsolescence, because of improvements is very heavy. For that reason we have asked for 4%, or $73,500.

Now we have account No. 544. I won't read it to you, but I want to go over some few of the main points. An analysis of our underground cables, since the time they were first put in, about 25 years ago, and the actual retirements in them, I worked that out, gave an annual retirement rate of about 4 and a third %, except for the Bay Shore Line, which is a wooden pole line, where a 7% rate is considered necessary. We apply those rates and we get an annual charge of $27,000, a weighted average rate of 3¾%. We have there on that basis a total of $2,000,000.

Q. Now you adding up? A. We are taking up as a whole all the items we had. We have on that basis, $2,-149,000, which is about 4%, or a trifle more of that depreciable property of the Company.

Now those are the first two methods of arriving at an absolescence charge.

We have also taken the rates as given to us, where we could find them, get them of some other companies, Washington, the International Railways of Buffalo, Boston and a Company who has asked that their rates be kept confidential, but I am perfectly willing to give the engineers of the Commission the name of that Company and show them the rates. We have applied the individual rate of those four companies to the amounts of money allowed by the Commission in each case to us and we have gotten the following overall percentages of depreciable property our depreciable property. Washington 3.9%, International Railways Company of Buffalo 4% on their valuation based that 4% is.

Q. That's not on cost? A. That is on their valuation.

(The Chairman) How was that established?

(The Witness) By the Public Service Commission of New York, sir. I will read you their letter, if you would like to have it, Mr. Commissioner.

(The Chairman) No.

(The Witness) They simply said that that is what it is on. Boston 4.3%, and this other Company 4 and a half percent.

(The Chairman) All on valuation?

(The Witness) The Boston Company, I don't think, has got any valuation. I think they set that up for what they think they have to get to reproduce, that is so much rate on that.

(Commissioner Harper) Is it the result of rate proceedings?

(The Witness) Boston didn't have any rate proceedings to that extent, as I understand it. They were guaranteed.

(Mr. Tingley) The Public Trustees can fix the fare?

(The Witness) Yes, and this is what they set up to keep them whole.

(The Chairman) When you say four and a half per cent, that's of what?

(The Witness) The basis is this, we take their rate which they give us, they give us 4% on track, for instance. We apply that to our track. We apply their rates all the way thru, instead of the ways that I have figured from the history and they are very close. I figured my own first and got these others of confirmation afterwards. They are rather hard to get because they do is different ways. Most of them just put the maintenance with it, and of course the minute you do that any base disappears, and we have applied that to our base which the Commission gave us. Then we have added up the items in that base, because in some places, for instance, Boston has no park and resort property, neither has Washington in their valuation. We have added those up and we found the

amount of money that those rates give us and we divided one into the other and get an overall rate.

In other words, there is $47,979,675.00 that we have that can be applied to the same things that Boston has, and the money that Boston has on that is $2,056,000, and divide that in and you get your 4.3%.

Then one further thing must be remembered, that of course there has since that have been added, the date that these values were put up, at least a million dollars of bare bones addition of capital to the valuation, thru cash expenditures, which also must be taken into consideration.

Q. That's what exhibit No. 23, that you first testified about shows? A. Yes, and that is why I added that $40,000 which the 4% on that would give to the $2,149,000, and it gives me my approximate $2,200,000, or a little better than 4% on the depreciable value.

Q. So the net result of all of your investigation and of your testimony is to indicate that about $2,200,000 will be required on the average each year to take care of necessary replacements of the property that is included in this valuation and of the Commission and which has been added to it since, is that right? A. Yes.

Q. Or expressed as a percentage on the valuation you say about 4%? A. About 4%.

Q. That's all I have to ask you, Mr. Hill, unless there is something you desire to say yourself. A. I might say that as far as the valuation is concerned, I have put into the hands of your engineers all the data we had and it is probably easier to show where it comes from in this little book that I have here (indicating) and any time they desire I will be glad to go back and make any corrections.

NINTH DAY.

Thereupon—

BANCROFT HILL,

a witness of lawful age produced on behalf of the Applicant, having heretofore been duly sworn according to law, whose examination was suspended for the purpose of adjournment, resumed the stand, was examined and testified as follows:

CROSS-EXAMINATION

By Mr. Tingley:

Q. Mr. Hill, taking Exhibit No. 23, which was filed by Mr. Emmons? A. Yes, sir.

Q. In that exhibit easements are valued at seven million dollars, are they not? A. Yes, sir.

Q. The question of easements value is still pending before the Commission, isn't it? A. It is.

Q. Does this estimate indicate that seven million dollars is the maximum expectation as to easement value? A. No, it indicates that at that time that was all the indication of the value we had.

Q. That was the only indication of value that had been given? A. Only official one.

Q. How many miles of track are not longer being operated as a result of the rerouting program? A. There have gone out 18,107 feet, which would be about three and a half miles.

Q. Is that mileage or any of it included in your track abandoned or removed? A. No, but there has not been figured anything for the track put in. We have put in track.

Q. How much? A. I don't know. It's in the total amount of cash put in without the overhead.

Q. What is the total amount of track abandoned and removed and the total amount of track not operated because of rerouting program?

(Mr. Howard) During what period?

(Mr. Tingley) Since the rerouting.

(The Witness) You mean since the valuation, Mr. Tingley?

Q. Yes, since the valuation? A. This figure of 18,107 feet is what I understand that track to be.

Q. That's the total of both track abandoned because of rerouting and all track abandoned and removed? A. It is the total of all track abandoned and removed from any cause.

Q. Now how about track that has been abandoned because of rerouting but not removed? A. That track, to what extent it exists, I don't think there is very much of it, but to whatever extent it exists is still in good operating conditon and it may be used again.

Q. Now in a good many cases, the joints connecting it to other tracks have been disconnected and have been taken out? A. In some cases. I doubt if it's a good many cases.

Q. So that track wouldn't be in operating condition, would it? A. Yes, the track would be if you connected it up again. They are not using it today.

Q. It isn't used or useful then at the present time? A. Well, it's useful if you want to connect it up, yes.

Q. It isn't used and useful at the present time? A. It is not used, no.

Q. Has any deduction been made from estimate of easement value on account of these track retirements? A. No.

Q. To bring the valuation to date wouldn't such a deduction have to be made? A. Yes, I believe such deduction would be made.

Q. If that deduction were made for track abandoned, and an allowance made for new track installed, what would be the effect on the claim made for easement value? A. The difference between them, whatever it is. I can find that for you.

Q. Have you made any allowance for depreciation to

December 31st, 1923? A. Only to the extent of retirements. We have figured the retirements.

Q. But only to the extent of retirements? A. Only to the extent of retirements.

Q. Has any depreciation been incurred aside from retirements since December 31st, 1923? A. I believe in my own opinion, whatever its worth, that the company is in good operating condition from observed depreciation, as it was at that time. We put in more new money than the amount of present-day value of old property removed, and I believe we are in as good present operating condition as it was.

Q. The property has been kept up through maintenance and depreciation reserve, hasn't it? A. The property has not been kept up through depreciation reserve, because I don't think we have accumulated either or set aside enough for replacements leaving aside the question of reserve. Its been kept up through capital as I think is evident from these exhibits here. If you take the present method of setting up capital, it is much more than we get when we retire it as I have endeavored to do here at present day value. We haven't got as much capital, that is, we haven't got as much assets.

Q. By saying its been kept up through capital, you mean the difference between retirement and replacement cost is made up of new capital? A. Yes, sir.

Q. Don't your figures for additions include the cost of retiring the property replaced? A. No, I think not. The auditor was asked to get me only the cost of construction out of our depreciation fund or out of new capital.

Q. So while Mr. Markell referred in his opening statement to a subtle process of confiscation that had been going on in this company's affairs over a period of years, which consisted in the company's not being allowed to earn enough to provide for retirements as they accrued, this subtle confiscation, if I understand you, consists in fact that the company is only allowed to build up a depreciation reserve to provide for the retirement of original cost and not of replacement, is that correct? A. I

don't believe Mr. Tingley that they have been allowed to do that. If you will examine the cars and those items, I don't think they have been allowed to do that. I think in one of the opinions in one of the fare cases, it was stated that this did not take care of the retirement of but forty cars a year.

Q. Is the balance in the depreciation reserve at the present time sufficient to take care of all accrued depreciation at original cost figures? A. I don't know. I think that would require an examination of what that account consists of which I have never made.

Q. Was the discovery of this subtle confiscation yours or that of counsel? A. Why I think it came simply from an examination of the figures of what we were doing. When we set up here the valuation additions and when we set up the book additions, it was perfectly apparent to us that something was happening to us; that we were building up capital and we were not building up plant. I don't claim the glory of this thing myself.

(Mr. Markell) Don't be too modest to answer.

Q. You know the present method employed by the company is required by the Accounting Rules of the Public Service Commission, don't you? A. I don't know, but I wouldn't be at all surprised.

Q. Do you know that those rules are based on the Inter-State Commerce Commission rules of accounting? A. I wouldn't be surprised at that either.

Q. Are they enforced elsewhere? A. I don't know. That would be an accounting question, Mr. Tingley. I have only tried to find what we would have to put up to keep us where we are now.

Q. Did you start out with a total figure and try to justify it by showing the rate of depreciation to be anticipated for the various types of property or did you start with the retirement needs and bring up to that figure? A. No, I started with a study of what was happening to us and how fast our property was going out. In some places we have had to estimate that and in that case I have indicated that it was only an estimate, but

an estimate that I think was in line, when you find the weighted average rate of other companies and you consider the whole history of this thing, is apparently reasonable.

Q. The first factor you considered in arriving at your depreciation allowance was obsolescence of the entire character of service, such as the replacement of horse cars by cable cars and cable cars by trolleys, wasn't it? A. Yes, sir.

(Mr. Howard) You mean that was the first method?

(Mr. Tingley) That was the first method, yes.

Q. (By Mr. Tingley) Do you think that a capital loss that the company experiences when its service is superseded by another character of service, should be borne by the stockholders, or that the public should insure against the changes in the art? A. If those that are to put out the capital for any public enterprise are not going to have a reasonable opportunity to keep that capital intact, I personally, and it's only my personal feeling about it, don't see how we can have a public utility.

Q. That's your personal feeling? A. That's all. It isn't worth any more than just that.

Q. Do you know any companies that have been allowed to set up a reserve against possible changes in the art? A. I would say that the International Railways of Buffalo, for instance, set up 4% on their valuation figure, which they inform us that they do, which comes so close to what is indicated is the general change of 4½ to 5%. I believe they do do that.

Q. And that's true in spite of the fact that tomorrow the entire industry might be superceded by buses? A. As I say about the cable roads, the mere fact that such a necessity was not seen, it doesn't mean that it isn't there.

Q. What private industries do you know of? Or what private companies that set up a reserve against supercession of the industry? A. Why, I have never had a

chance to find that out Mr. Tingley. No companies make those things public.

Q. Isn't there a period of relative stability attained by all industries after the first developmental period has been survived? A. It hasn't in this. You take the condition when the cable roads came here. They were supposed to be the last word in rapid transit. They were as far as that went, as I said yesterday. Mr. Hambleton, who was the president of the company, and Mr. House were hailed as being great benefactors of the city.

Q. How long did the cable cars come after the horse car? A. About thirty years.

Q. How long did it last? A. I think about seven years, before it was practically obsolete.

Q. How long has the present form of operation been in use? A. I think the present form of operation has probably been in use for ten or fifteen years. There is to me a very distinct form of transportation——

Q. Pardon me, just a minute. Are you talking about the general method of trolley operation or the character of track? A. It's the character of the track, it's the cars and it's the power. There isn't much more to it except the easements and things of that kind, they didn't change, but when I asked for 5%, I only asked it on the depreciable property.

Q. Getting back to something that we have all seen very recently, you saw the Pageant of the Fair of the Iron Horse, didn't you? A. Yes.

Q. And in the early states of the development of the steam railroad industries the changes were very rapid and very fundamental in character, weren't they? A. I don't know how rapid they were. I doubt if they were any more rapid than they are now.

Q. Every year or two didn't they? Not fundamental now are they? A. Yes, fundamental changes now. That King George engine was a four cylinder engine, absolutely radical. The booster has come in. The booster is a locked gear engine that works on that small wheel

under the cab. There has an auxiliary engine come in under the tender and the automatic train control has come to our engines.

Q. Aren't those changes in method rather than fundamental changes? A. No, we have three cylinder engines in this country and we have four cylinders abroad. I would think they were very fundamental differences, but I am not expert on steam railroads.

Q. What industry do you think is likely to supercede the street railway industry? A. That I can't say and I don't think anybody else can say. But also they would have told you the same thing with the cable cars.

Q. Do you think the street car is in danger of being superceded by the buses? A. No, I don't think so. I don't think they haul enough people, but once more I am only giving you my personal opinion.

Q. If there is any danger of supercession, it would appear to be from that quarter, wouldn't it? A. No, I think not. There are changes in the art. For instance, in some cities we have the one man and two men cars.

Q. Is that a change backward or forward? A. I say it was a change forward, and it was becoming more economical, and they have been in cities where even the newspapers have talked for the one-man car, and——

Q. That's wasn't true of Halethorpe, was it? A. I doubt it very much. I understand it wasn't.

Q. If there is any possibility of supercession of the street railways industry by the motor buses would that tendency be furthered by an increase of fare that would make the fare equal to that charged for motor bus operation? A. I don't believe so.

Q. You don't think that would have a thing to do with it? A. No. I can't imagine that anybody is going to do any great amount of walking for two or three cents.

Q. I don't think you understood the question.

NOTE: Question here re-read by court reporter.

A. No, I don't think so. If it is any interest to you,

Mr. Tingley, I think motor bus fares have to go up in places where they use them pretty soon, when they come to the point where the buses wear out and come up to this question of depreciation like we are.

Q. Are motor buses losing or making money? A. Our buses, I think one line is making money.

Q. How about the revenue passengers on the bus lines, are they increasing or decreasing? A. I think they are increasing.

Q. Mr. Hill, the whole theory of your study is to establish a retirement reserve rather than a depreciation reserve, isn't it? A. The whole theory of my study is to try to meet the rate of our retirements. I don't believe we are going to establish any reserve except one year we may have a little more and some year we may have a little less. I think after a company has been in business as long as we have, and have history that we have, to go back on they ought to be able to tell for a reasonable period of years what their probable retirements will be.

Q. Does that contemplate a complete change of policy for both the company and the Commission? A. I wouldn't be surprised.

Q. Which of the four cities you named, Washington, Buffalo, Boston and the mystery city, are allowed a depreciation rate based on valuation? A. The International Railways of Buffalo I think.

Q. Is that the only one? A. They are the only ones that say. I don't know what Boston bases theirs on Mr. Tingley.

Q. The Buffalo Road is an interurban road, isn't it? A. I think it runs out to Niagara Falls.

Q. It does. Don't you think the company's experience of retirements is a better guide in estimating depreciation requirements than life tables? A. I don't think life tables, as you call them, would be anything but experience. That's all we have got.

Q. I mean general life tables rather than the experi-

ence of the company? A. Except for a few things, such as buildings and things of that kind, which we haven't had experience enough, we have had some terrible mortality in buildings, but they have been in the cable and the steam plant and that sort of thing, but except for that I have tried to give you the history of the experience of our retirements and based it on that.

Q. Haven't the company's annual retirements since beginning to set up its reserve been less than the total amount set aside? A. Why no, I don't believe so.

Q. If they haven't then the company wouldn't have been able to accumulate a reserve, would it? A. The company's cost of replacements, which is a different thing from the company's retirements, the company's cost of annual requirements has certainly been a lot more than was set up.

Q. Why was the particular method of 5% of gross income for depreciation adopted by the company in the first instance? A. Well, I have heard that discussed in every case we ever had, and it seemed to me, for whatever it may be worth, that about that much was considered at that time to be available for depreciation and was used for that, but once more Mr. Tingley I am only giving you my personal advice, I haven't gone into that.

Q. Isn't it true that the company's failure to set up a depreciation reserve prior to 1912 is largely the cause for its wanting to increase its allowance now? A. No, we are not asking for anything back. We can't, I am sorry to say.

Q. That isn't the reason for it? It isn't deferred maintenance? A. No, indeed. We are only asking you now to not let us get any worse.

Q. You are just anticipating that the future is going to be different from the past? A. No, I am anticipating the future is going to be just like the past.

Q. Now in estimating the probable life of property by considering past retirements on similar property isn't it important to consider a long enough period of

time to allow for the operation of the law of averages? A. We used I think 18 or 19 years on cars, which was about 35% of this thing.

Q. You used eight years on track? A. And used eight or nine years on track, because there has been a very radical change in track in this city, if you remember——

Q. Yes, I do. A. Back of that period. About fifteen years ago I guess it was, there was a straight or practically a revision in track. We had the dirt ballasted tram girder rail cobble stone track, and its been replaced with a very much heavier and a very much different type of track, and the rail on it is different.

Q. Mr. Hill, turning to page four of your study, "Tracks."

(Mr. Howard) You are on the other exhibit now.

(Mr. Tingley) Yes, on the other exhibit. That's Exhibit No. 25.

(The Witness) Yes, sir.

Q. What salvage value did you allow for steel rails retired? A. The cost, I am informed by our engineering department, of removing that stuff is so close to any salvage that you may get out of it that there is practically no salvage in it. When you take out track, to replace it you have got to do your excavating anyway, so you have got to remove the track, and the track so to speak there is a by-product.

(Mr. Howard) You mean there is salvage in that?

(The Witness) There is, and we allow salvage of 50c a foot.

Q. Isn't some of that steel rail taken up and relaid and used for maintenance purposes? A. I don't think to any appreciable extent.

Q. Don't you know whether it is or not? A. Yes. I asked that no maintenance be included in any of these figures that were given. Now I will go back if you want in that and make sure that there is no maintenance in that.

Q. If some of the rail is being used in that way, it's worth more than scrap value? A. Yes, if there is any percentage of it.

Q. And if the proper allowance were made of that item and it is being used, the life of the expectancy would be increased and the depreciation allowance decreased? A. Yes. The company's life expectancy would be increased.

Q. Your allowance on trackage was based on your average experience for the last eight years, wasn't it? A. That's right.

Q. And you reached a figure of $679,600.00? A. Yes, sir.

Q. Do you know what the average charges to depreciation reserve for track renewals for the last eight years have been? A. No, I do not.

Q. Would it surprise you to learn it had been less than $400,000.00 a year? A. That's a very good check. It's about half. It wouldn't surprise me. It would make me feel——

Q. That you were as close as could be expected? A. Yes, sir.

Q. That's the highest was $453,000.00 in 1919? A. I don't know anything about the year, but I wouldn't be at all surprised. This track will run just about double owing to the normal labor increase in it.

Q. Why should the Commission allow the company more for its future requirements than past experience would seem to warrant? A. Well, that's to say that you can never correct a mistake when you believe you have made one.

Q. What's the evidence of a mistake in the experience of other companies? A. Why the experience of other companies is that we do find companies that are putting up about the same rate on the value, and some of them are putting it up on the reproduction new cost.

Q. How many of those companies did you find? A. I was only able to get hold of four companies, the rates

of which were distinct enough to apply in the manner we have applied them here.

Q. Now out of those four how many were basing their method on the valuation? A. One was certainly doing it, and I don't know about the others, but Mr. Tingley it wouldn't make any difference to me whether I found they were making a mistake or not, I wouldn't consider that any reason why we should make a mistake.

Q. I am just trying to find the basis for this subtle confiscation? A. The basis is that our debt is being increased without a corresponding increase in our rate base as figured on the rules that have been laid down, and I think it makes no difference what other companies do. If they don't know that I will be very glad to go and tell them about it after I get through here.

Q. I am sure of that. Turning to Account No. 515, Bridges, Trestles and Culverts? A. Yes, sir.

Q. Hasn't the Mt. Washington viaduct already been retired? A. No, sir. Wait a minute. I beg your pardon, I don't think it has. As a matter of fact it only took place this year.

Q. Provision will be made for it this year, won't it? A. If we have money enough. I hope it will.

Q. Will the company have to replace any other bridge in place of it? A. No, but the value of the bridge has been used up in public service, and we certainly are not supposed to lose that money.

Q. The same thing is true of other bridges? A. All three of them, yes.

Q. They will have to be replaced by the company? A. No, but the capital is still on the books for those bridges.

Q. If nine years prior to 1927 had been taken for the purpose of your study, wouldn't it have resulted in an allowance for depreciation of one-tenth of 1%? A. Why no, Mr. Tingley.

Q. Let's see. The Belair Road bridge was retired in 1925, wasn't it? A. Just a minute. There was $1,281,000.00 and if you take this nine year period——

Q. Prior to 1927. Not including 1927? A. Oh that happens, yes. I have places where there were six years, where there were no cars retired, and in that case we needn't have set up anything, of course, and the next year we were faced with three or four hundred.

Q. It makes no difference what period you take? A. I have tried to take a reasonable period, a calendar period. Where a thing was patently before you I think we have a right to take cognizance of this.

Q. For instance, in this nine year period, prior to 1927, not including 1927, the Belair Road bridge was the only one retired? A. That's right.

Q. That cost $12,179.00? A. No, it didn't cost that. That's its present day value.

Q. That's the only figure that you have against it, isn't it? A. That's all.

Q. And that divided by nine years would give you $1,350.00 a year? A. I wouldn't be surprised.

Q. And that divided by your $1,281,000.00 would give you one-tenth of 1%? A. That's right. A thousand years for the life of your bridges.

Q. Has the company retired any bridges besides the Belair Road bridge in fifteen years prior to 1927? A. I think so.

Q. Which one? A. They had an interest in the Light Street bridge that went out right before this.

Q. Is that shown on the books of the company? A. The interest in the Light Street bridge?

Q. No, the retirement? A. I doubt it.

Q. Do you know of any other bridge that's been retired in the last fifteen years prior to 1927? A. No.

Q. If only $114,951.00 of bridges were retired in fifteen years wouldn't the percentage be reduced accordingly? A. I am asking now for the deterioration of a million dollars worth of bridges or a million and a quarter and also for obsolescence.

Q. But you based it on retirements, didn't you? A. No, this is one of the cases where we gave what retirements needed and had to be satisfied. It's a very small item in the whole thing. It's not the 75% I say we had history on.

Q. But doesn't your result depend on what period of the history that you take? A. Oh, yes. Just as I say you can take a period of cars and show nothing at all.

Q. And by taking different periods, by your method, you could arrive at any desired result? A. No, the results were very undesirable.

(Commissioner Harper) In the vaulation case, what was the life of the bridges placed at?

(The Witness) We were advised there by the only one I think that testified on it, and certainly competent to Mr. Pagan, as I remember, 2% he would advise any client to put up no matter what the history of the bridge or how old it was.

(Commissioner Harper) Fifty years life.

(The Witness) Yes, it made no difference.

Q. And he estimated depreciation at 2%? A. And he was not take obsolescence in any sense.

Q. How do you know he wasn't? A. Because we asked him as I remember the thing.

Q. In the last ten years, according to your testimony, $114,951.00 has been retired for bridges, hasn't it? A. No, sir It has accumulated for bridges. It has not been retired.

Q. It has been accumulated for bridges, and that's at the rate of $11,495.00 a year? A. That's right. About 1%.

Q. And now you anticipate $38,400.00 a year for the future? A. That's my 1% plus Pagan's 2%, gives me 3%. That's how I got it.

(Commissioner Harper) 2% then is depreciation and 1% is obsolescence?

(The Witness) That was where I got my 3%, Senator.

Q. Taking your accounts Nos. 530 to 533, cars? A. Yes.

Q. In the table on page 23 did you use all the cars shown to get your weighted average life of 15.8 years? A. You mean all the cars in that table?

Q. Yes? A. Yes, I think we did. That was my instructions that they should do so.

Q. Now out of 1,022 cars shown, aren't 719 single truck cars? A. I wouldn't be surprised.

Q. Does the company have many single truck cars now? A. I think, I don't remember the proportion of the units, about 85% of our mileage is made with double truck cars.

Q. Didn't the single truck cars shown in the table show generally the shortest life? A. Yes, well, I don't know whether they do or not. I never looked at them that way.

(Mr. Howard) The table shows which are single and which are double, don't they?

(The Witness) It does. Yes, the three sets of double trucks there have had longer than average life.

Q. Wouldn't that alone indicate that the cars you have at present will have a greater life expectancy than those? A. When you increase the allowance about 67% I think you recognize that fact, which I have done.

Q. Hasn't considerable salvage been experienced on cars returned in the past? A. I think they get some glass out of the windows which is nothing on the open cars, and they get out some parts and things like that.

Q. What did you get for the Birney cars? A. They sold for about $2500.00 a piece. That's 18 in one thousand and twenty-two. Those are the only cars that we were ever able to sell as I understand it. They are the only cars we ever sold. Those 18 you see there.

Q. Isn't the Company converting some old cars into

cars of different types? A. Yes, sir, but they are not in the valuation. We have some old open-car frames.

Q. But they are in your table, aren't they? A. No.

Q. In this table on page 23? A. No.

Q. Aren't there 110 of them in there? A. I don't believe so, I will check that up.

Q. Aren't the 105 double truck convertible, and 110 double truck open cars among the cars converted? A. The 110 open are in there, to the extent that the salvage we figured on them was worth about $1200.00 a car.

Q. Haven't those cars already shown a longer life than most of those in the table? A. Yes, they have.

Q. Won't their anticipated life be extended for approximately another cycle by their use in that way? A. We can't tell. You can't look forward enough to see. I think they will be extended, they certainly will be extended to some extent, and that's why I added my 67% on to the life to take care of it.

Q. Doesn't the ability to use cars in this way tend to offset obsolescence? A. Yes, it helps to offset obsolescence.

Q. The majority of the cars now in use were purchased before the war at relatively low prices, weren't they? A. I don't know what their purchase price was. I can tell you what their reproduction value is approximately.

Q. Do you know that the actual annual retirement of cars for the last 15 years has averaged $130,000? A. No, I don't believe it either, if you will excuse me for saying so. The average for retirements on the books might have been that.

Q. That's what I mean. A. I wouldn't be at all surprised.

Q. Doesn't that make the $725,000 claimed on page 23 seem large? A. No.

Q. Don't you think the books are right? A. No, I don't think they represent what's happening to us. I am no accountant, so it oughtn't to have any effect on anybody that does think they are right, but I don't.

Q. Which department of the Company do you think the Commission ought to place credence in that matter? A. I think the Commission ought to look over the facts we present and see whether they are facts, and if they are facts, or they indicate facts, I think the Commission ought to be guided by those facts, and not by any rule of anybody.

Q. Not even of its own rules? A. No, sir.

(Mr. Clark) Or your theoretical rules?

(The Witness) Or my theoretical rules. We want facts.

Q. Turn to page 25 of your study, power plant equipment, account No. 542, 3% is the annual depreciation estimated there, Mr. Hill, isn't it? A. That's right.

Q. And the Owings' Mills substation is 35 years old and still going strong, isn't it? A. Well I don't know how strong it goes. It's one of those items, I am frank to tell you we can only get from our general experience. I don't believe it's going strong, no.

Q. How old is it? A. I don't know. I will find out for you.

Q. Don't you know? A. No.

(Mr. Tingley) That's all.

CROSS-EXAMINATION (Continued).

By Mr. Sobeloff:

Q. Mr. Hill, I don't want to ask you any questions that have been covered by Mr. Tingley, but I am interested in one or two matters that you have touched on. In regard to this Mount Washington Bridge, what was the probable life of the bridge that was retired? A. Our Bridge expert told us that he recommended 2% on any bridge, and that coupled with our obsolescence is all that I gave you on that.

Q. Now how old was that bridge? A. I don't know that.

Q. What did you value that property at in your valuation? A. $87,000 and some hundred dollars, I think it

was. By the way, I didn't value it, it was valued by Mr. Pagan, our expert on that.

Q. What is the expectancy of this new bridge just erected? A. Well it isn't our bridge.

Q. Did the United Railways contribute any part of the cost to the new bridge? A. I don't know, but I don't believe so. No, they didn't and we are not claiming that either, and we have used up this out of our property.

Q. But Mr. Emmons referred to that as illustration of the heavy and unexpected expenses that the Company is put to. A. We have that much capital on the books, the cost of that bridge, whatever it is. We have got to do something about it. It's certainly heavy and it is unexpected.

Q. Do you think you are entitled to a credit for a bridge which was a burden to you? The charge on your maintenance account has been taken away and you now have a good substantial concrete bridge that you didn't contribute to the construction of and that you won't have to contribute to the maintenance of? A. Do you think if you are allowed a return on the value of your property devoted to the public use——

Q. Wait a minute, you are getting away from my question. You are setting up a maintenance reserve. I am asking you, Mr. Hill, how much you think your Company ought to be allowed out of this maintenance reserve or depreciation reserve in a case where, instead of having a bridge that cost you annually a large sum for maintenance and replace of parts, and painting and other items of that kind, you now have presented to you free of charge, at the expense of the taxpayers of Baltimore, a much better bridge on which you don't have to pay one cent to maintain it? A. And on which we are allowed to make no return whatever, or profit.

(Mr. Tingley) Why should you?

(The Witness) Because we haven't got it.

Q. You didn't invest anything? A. But we put up $87,000 originally and we are responsible to our bond holders for that, and it's gone in the public service.

Q. What did you have to pay annually to maintain the Mt. Washington bridge? Have you any figures to show that? A. I haven't any idea. That comes off expenses; it doesn't come out of the stockholders' pockets.

Q. Do you know whether the United Railways would be able to salvage any material amount of that bridge? A. I asked the Chief Engineer this morning and he said he didn't think he would get anything out of it at all. You have the labor, it will probably have to be cut down with an acetylene torch and carted away.

Q. Don't you think there will still be a substantial salvage above the cost of removal? A. No.

Q. Are you sure of that? A. Yes.

Q. Will the United Railways be willing to turn that over to the city as compensation for the present bridge? A. I wouldn't be at all surprised if they would. I can't make a promise for them, but I will find out.

Q. I tender the acceptance of the tentative offer now? A. If you don't mind me asking you, what will you do with it after you get it?

(Mr. Tingley) Put it in the valuation.

(The Witness) No, it's coming out of the valuation now, that's what bothering us. If you leave it in the valuation all right, and of course the cable road and that should be put back in too.

Q. As a matter of interest, I would like for you to find out for me, if you can, what it has cost the United Railways annually to maintain that bridge so we can determine how much it has been relieved of? A. Yes, I have got to qualify that to that extent, Mr. Sobeloff; I don't know whether we can tell you any more than to make an estimate.

Q. You know what it costs to paint it every year? A. We can determine that. We don't keep any separate account of cost on the Mt. Washington Bridge.

(Mr. Tingley) Will the books be accurate on that?

(The Witness) Oh yes, on the maintenance. I think

the question of maintenance on the whole item of bridges is shown on the books.

Q. Now in regard to the tracks that are unused, which I understand you estimate at 3½ miles— A. No, I estimate that we had taken out in the last eight years, removed 20 and a third miles.

Q. You say twenty and a third miles were taken out in the last eight years? A. Yes, sir.

Q. Now how much has been taken out since the valuation, as of December 1st, 1923? A. You can get it very quickly by adding up here on page 5 the item Edmondson east of 7th Street on down.

Q. Has that been taken off of your valuation? A. Oh, yes.

Q. And has it also been taken off in your computation of the proportionate part of your total trackage on which you pay a Park Tax? A. I guess if it's gone, we don't run over it.

Q. Do you know or are you just guessing? A. I don't know whether it's gone out of the Park Tax, but the Park Tax is paid on the question of mileage. Now, can you make mileage over track that's been taken up? A. That's exactly our contention. You can't make any mileage on tracks that are not being used, and yet it's computed in the proportion on which you pay your Park Tax, you take mileage in figuring the total trackage of the Company for all this unused track? A. No. Mr. Sobeloff, I think you are wrong.

Q. I think that's what Mr. Emmons said on the witness stand. A. We take credit, Mr. Emmons, can check me, we take credit for the mileage of the two different kinds, not for the trackage, we base it on the mileage the cars make and not for the trackage. We base it on the mileage the cars makes and no car makes mileage on track that's been taken up.

(Mr. Tingley) Or on track that's abandoned thru rerouting?

(The Witness) Well they might make mileage on aban-

doned track, that's possible, but it certainly is not possible here.

(Mr. Tingley) Is that why it's left in the easement?

(The Witness) What's left in the easement allowance my impression is that it very close to balances.

(Mr. Tingley) In other words, if it does not balance something ought to come out?

(The Witness) Absolutely, I agree with you and willing to take it out at $90,000 a mile, which is the value of easements.

(Mr. Markell) Out of $90,000.

(The Witness) The easements are worth $90,000 a mile, yes sir, and it ought to come out that way.

Q. Do you value the easement the same on Lexington Street, where you don't use the track as on Fayette Street, where you do use it? A. We use the track on Lexington Street. We don't use it much, it's used for the Mail cars, and we couldn't get into the Post Office very well without it.

Q. Do you consider that as valuable in your valuation as the valuation of the Fayette Street track? A. Yes, it's an interest in real estate, as I understand it.

Q. Regardless of the use to which you put it? A. I won't argue the law with you, I am no lawyer as you can readily see.

Q. I won't argue engineering with you, either? A. I will be glad to have you do that.

Q. Don't you recognize any decrease in your valuation between a situation like that on Lexington Street, where you have a track and you are making no use of it, or usually no use of it, and Fayette Street where the cars are running over it every fraction of a minute? A. We are told by the Court, as I understand it, that we could not include in the valuation easements any element of earning and if you don't include earnings, how do you include mileage? Again, I am arguing law and I apologize.

Q. Do you think a mile of track is a mile of track no matter where it is? A. A mile of easements.

Q. And an easement is equally valuable whether it's held useful or sporadically used? A. That's what I gather, that's what I understand, I don't know.

Q. Well, it would surprise me if that were the law? A. A great many things surprise me.

Q. I would be very much surprised if that was correct. A. I will go you one better, and say I don't know anything about it, Mr. Sobeloff.

(Commissioner Harper) Have you acquired an easement in the Mt. Washington Bridge?

(The Witness) That was private property and we haven't written it off yet, Senator.

(Mr. Tingley) Are your easements private property?

(The Witness) Private right of way I should say. No, I don't know whether they are or not.

(Mr. Tingley) I don't either.

(The Witness) Then, you have got to remember, Mr. Tingley, that my special easement counsel is on the high seas today, and I don't like to talk easements without him.

Q. What is the total amount of track valued that the Company has which is not used regularly but is in the same situation as this Lexington Street track? A. It's very small, it's less than 1%.

Q. You will get me that Mt. Washington Bridge figure, will you, Mr. Hill, as to cost of maintenance? A. Yes.

CROSS-EXAMINATION.

Br. Mr. Toole:

Q. I have only one or two questions. Mr. Sobeloff and I talked about bridges and so on coming down and he has asked all the questions that I would ask.

I want Mr. Hill to look at the table on page 8 and then count up the first column and ask if all his figuring and

facts are in the same relation to that same column? A. Have you found an arithmetical error? It does look to me that you have and I will make the same statement, that in all these cases we do the thing as accurately as we can.

(Mr. Markell) An error of $5.00 in $114,000.

(The Witness) We will withdraw that $5.00 and if you will show me another $5.00 I will take that out to. We should have over on page 29 $2,149,205.00.

Q. Is there anything else you want to withdraw? A. If there are any more $5.00 we will, sir.

CROSS-EXAMINATION (Continued).

By Mr. Clark:

Q. Mr. Hill, haven't engineers determined that for three or four cycles of replacements in a company such as yours that the volume or amount of replacements annually are not the same? A. Over a period of years, yes.

Q. After three or four cycles of replacements? A. I wouldn't imagine it would have to be that long. It would tend by and by to equalize. It would be like that cars, nothing for six years and then a big number would take place, and if you stand far enough off and use it you get about equal.

Q. And that is somewhat proven by the fact that for the past we won't go back further than eight years, your retirements costs have been about the same? A. You mean the retirement costs of the company?

Q. I mean the amount of retirement are about the same.

(Mr. Howard) You mean about the same each year?

(Mr. Clark) Averaging about the same.

(Mr. Howard) I think any period they average the same.

(The Witness) I wouldn't be surprised.

Q. We average about $800,000? A. What are you going to talk about? Are you going to talk about just track at present-day value?

Q. I am talking about all your depreciable property? A. You know, Mr. Clark, perfectly well that we have not put on the books any cars to amount to anything. You know the 1919 opinion of the Commission said that the fare they gave us didn't provide for any cars altho they think it ought to be taken off.

(Mr. Tingley) The fare the Company asked for?

(The Witness) No, the fare the Commission gave. But I don't consider that that has any relevancy there, because I think we produced the facts in this thing, that so many cars have gone out, and you have an average life of less than 16 years for those that have gone out, and for that we estimate a rate of retirement over a period of years of about a little more than one-half of what those figures indicate.

Q. You mean then that the Commission's allowances have not been sufficient to take care of your retirements needs or replacement needs? A. It certainly would seem so.

Q. As a matter of fact you have been able to take care of all of them and accumulate a reserve? A. No, not if you take those cars off, we haven't. You certainly have not accumulated any reserve that I can see.

Q. What is the million and a half depreciation reserve that you report— A. I don't report.

Q. To your stockholders? A. I try to do the valuation and find out what we need to keep up with what we got and that's about all I can do.

Q. You are familiar with the report of your Company to the stockholders? Have you read it? A. Yes, I have read it.

Q. You have I suppose examined the statement there made with respect to the depreciation reserve? A. I don't think I have.

Q. You have never seen it? A. I have seen it, but I haven't examined it.

Q. Do you know what the Company's depreciation reserve was on December 1, 1922? A. Have no idea. I

have tried to find out as I told you what we need to keep us here we are and no more or no less over a period of years. I have tried to bring the valuation down to date in a conservative manner.

(Mr. Tingley) This was a more or less sudden discovery, wasn't it, Mr. Hill?

(The Witness) What's that?

(Mr. Tingley) More or less a sudden discovery.

(The Witness) I think it became very sudden when you set up what your books were showing you and what you actually had to show the Commission to justify any rate of return.

Q. Weren't you surprised yourself at the fact that you found, or thought you found in obsolescence——

(The Witness) Over depreciation? Yes, indeed. I told you confidentially this morning that I was very much surprised at the obsolescence was of so much more importance than depreciation.

(Mr. Tingley) As I told you that confidentially I didn't believe it.

(The Witness) That's all right.

Q. Mr. Hill, we are very much surprised often when we compare theory with facts. A. Why, yes, the theory that our books showed us, against the facts that this thing showed us surprised us a great deal.

Q. And you would adhere to the theory rather than the facts, notwithstanding? A. No, I want to cut loose from the theory and get down to the facts, and let's keep the valuation and keep enough for our retirements.

Q. How do you charge for retirement jobs, costing less than a thousand dollars? A. I think they are maintenance charges. We kept them out of here.

Q. Does it make any difference in your account, in which account that charge is made? A. Why, no, as long as you don't set it up in your depreciation, it doesn't.

Q. What proportion of the total amount of retirements for the year in percentage come within the thousand dollar class, and are charged to maintenance rather than depreciation? A. Why there isn't a proportion. What goes to maintenance, goes to maintenance, Mr. Clark. It isn't considered a portion of depreciation.

Q. Do you know the answer to that question? No. You mean how much is in maintenance?

The exhibits show that.

Q. Do you know how much the proportion of the amount of retirements for the year, because of the thousand dollar rule are taken out of maintenance, instead of depreciation? A. No, maintenance of whatever it is, and depreciation we think is this much.

Q. Have you ever had occasion to investigate that as valuation engineer of the Company? A. How much maintenance was? No.

Q. No. I didn't ask that. A. You asked how much is charged to maintenance and——

Q. You told me and I think it's correct that if a retirement job is less than a thousand dollars it is charged to maintenance and not to depreciation, is that correct? A. No, I said anything less than a thousand dollars was considered a maintenance expense. That's right. Now if you want the amount of those two things, we can take this maintenance which is in our exhibits——

Q. If a job is less than a thousand dollars it's charged to maintenance, and not depreciation? Is that right. A. That's right.

Q. Then all the thousand dollar jobs must be in the maintenance? A. Yes.

Q. What proportion of the whole does that amount to? A. What is our maintenance? Oh, I can't tell you, Mr. Clark. What's in maintenance, is maintenance.

Q. If you don't know, just say so? A. I told you I didn't. But it's in one of these exhibits. Whatever is maintenance is that amount, and the rest of it is what you consider——

Q. Of course I have no doubt that all your maintenance charges are in maintenance, but I wanted to know what proportion of them represents replacements?

(The Chairman) Mr. Hill said he did not know.

(Mr. Clark) I haven't heard him say that. I wanted him to say he didn't know. I am surprised, being a valuation engineer, that he doesn't know. I thought he could answer that question.

(Mr. Tingley) Was that confidential?

(The Witness) I will apologise to you Mr. Tingley, for using that word confidential. It was not what I intended to use. I should have said informally, and I have never in the world had you betrayed my confidence of anything I said to you, which you could have used against me, and I should have said informal. I am very sorry I used it.

Q. Mr. Hill, according to your calculation of the needs of the Company, the allowance should be for retirements $2,200,000 a year instead of about $800,000? A. Approximately that.

Q. And that is arrived at by this theoretical study you have made of the past of this company? A. Theoretical on about 10% of it. It's practical when you get to those cars and track and so on, what's actually happened to us.

Q. Are you serious that you would ask this Commission to increase the rate burden of the people of Baltimore City in order to get a thing which has never appeared in practice? A. I am perfectly serious in saying that that's the amount of depreciation necessary to keep at where we are.

Q. And you are just as serious about everything else you have said today? A. I haven't said anything else.

(Mr. Clark) That's all.

(The Chairman) Senator Benson, do you wish to question Mr. Hill?

(Mr. Benson) Just a moment or two.

(The Witness) I don't know anything about Halethorpe, Senator.

CROSS EXAMINATION
(Continued).

By Mr. Benson:

&. Don't you think there is any depreciation on the Halethorpe line? A. No, according to you, it's operating 100% and the most profitable line we have got and we ought to have appreciation on it.

(Mr. Benson) I move that answer be stricken out as unresponsive.

(The Chairman) Strike it out.

Q. Mr. Hill, you do figure depreciation on the Halethorpe line, do you? A. As long as the line is operating in good condition, we have not figured it as depreciation. If there has been a retirement—but I don't think that there has been a retirement on that line.

Q. Then you figure retirements or depreciation on a single track line that's one half of what a double track would be? A. It's whatever occurs when the line goes out, it's whatever number of feet of track goes out.

Q. You just figured depreciation as retirement then alone? A. That's right, except in the case of buildings, and other things of that kind.

Q. And there has been no retirement on the Halethorpe line? A. There hasn't been that I know of.

Q. Now in your figures on depreciation for cars—you have those figures there, haven't you? A. Yes, sir.

Q. How do you figure those? By mileage or life of the car or what? A. Figure them by the life of the car. That is the number of the cars that have gone out, and the life would amount to about the same thing.

Q. Does the mileage a car runs have anything to do with the depreciation of a car? A. I don't believe so, Senator. I think that the proper maintenance will keep that car.

Q. Then it does increase the maintenance? A. Yes, I don't doubt that.

(Mr. Benson) That's all.

REDIRECT EXAMINATION

By Mr. Howard:

Q. When you were being cross examined, Mr. Hill, and especially with reference to the cars you were asked the question whether the entries on the books that were charged to the depreciation fund, didn't represent the actual loss of cars, and you said they did not? and I understood you to say that they didn't in two respects. Is that right; that in the first place the valuation at which they were retired there was not the real value, that's right, is it not? A. That's true.

Q. And then in the second place didn't you say there had been a great many cars actually retired that hadn't been entered on the books at any value? A. That's my understanding. You are talking about the books. I tried to do the same thing that I did with the easements. I am not an accountant.

Q. Your calculation is based on what have actually been retired, isn't it? A. That's right.

Q. And these things that you have been asked to check up, you will do so of course? A. As I understand it was the question of easements, what the net loss in easements was and the maintenance on the Mt. Washington Bridge.

Q. And also whether any wire is being used that has been charged off? A. Yes.

(Mr. Tingley) Wasn't there a tentative contract on the disposal of that bridge?

(The Witness) I don't believe so.

(Mr. Tingley) I thought the city was to take that over?

(The Witness) I hope so.

(The Chairman) Major Purcell says that the Bridge

was offered to the city and the city declined to accept it. It had no use for it.

(Mr. Sobeloff) As a bridge you mean.

(The Witness) As anything I suppose.

(The Chairman) Major Purcell can state it.

(Mr. Sobeloff) Mr. Noel told me this morning that he thought there was a substantial salvage in it. If the offer is still open I will get a quick ratification of it. Is the offer still open?

(The Witness) I can't give Mr. Emmons' bridge away without asking him.

(Mr. Sobeloff) We are interested. We don't think we will lose any money on it. We have already lost our $340,000 in the new bridge.

(Mr. Howard) You have a quicker obsolescence than we have then.

(Mr. Sobeloff) We don't have any fares to set if off, we have to set if off at once.

(The Chairman) Any other questions to be asked Mr. Hill by Counsel?

NOTE: No response.

NOTE: Examination concluded.

NOTE: The Commission then adjourned for the purpose of taking a short Recess.

Thereupon—

LUTHER R. NASH,

a witness of lawful age, produced on behalf of the Applicant, having first been duly sworn, according to law, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Howard:

Q. Mr. Nash, will you tell the Commission your name? A. Luther R. Nash.

Q. What is your profession or occupation? A. I am a public utility executive.

Q. Where are you now located and what are your present connections? A. In Boston, as the Vice President of the Stone & Webster organization.

Q. Now would you give the Commission briefly an idea of what your experience in such matters and what your training in such matters has been? A. I have been connected with the Stone and Webster organization for over 30 years. A graduate of Massachusetts Institute of Technology, a Post Graduate of Harvard University and was successively for Stone and Webster superintendent of construction, designing engineer, chief engineer, manager of public utilities, supervisor of public utility operations, appraisal engineer, rate expert, more recently consultation on taxation and franchise matters and valuation and subject of depreciation. With respect to depreciation, it's one of my regular jobs to determine or review the annual appropriations for depreciation as made by the companies, numbering about 60 which are under Stone and Webster management.

Q. Stone & Webster is a very large concern, isn't it? A. They manage these sixty properties more or less thruout the United States and in some foreign countries and do a very large amount of construction work. A substantial part of which is for public utility companies, for that we have a contract with operation, construction and also financing.

I might add that I am a member of the various national utility organizations and of Committees of those organizations dealing with public relations, rates, valuations, franchises, taxation, depreciation, particularly on a Committee of the Railway Association dealing with the subject of depreciation accounting in connection with the program of the Interstate Commerce Commission to expand its system of depreciation accounts.

Q. Is it your duty or your custom merely to keep yourself acquainted with those things that come before you in your own concern, or do you also acquaint yourself with the state or knowledge generally and with the experience and ratings of other people on the same sub-

ject. A. Why I keep in touch with, in a general way, as far as I can, all that goes on in the public utility industry of major importance.

Q. I believe you, yourself, have published a book on related subjects. A. I have published a book on the economic phases of the public utility industry and written various articles of valuation, depreciation, and various other economic phases of the business.

Q. Are electric railways and street railways included in the companies that came within your experience? A. They are. We have a considerable number under our management.

Q. Now, Mr. Nash, there are two things, I want to ask you about and I don't know that it makes much difference which I take up first. Suppose I take up first Mr. Hill's testimony and his report. You have heard his testimony, haven't you? A. Yes.

Q. And you have seen his report? A. Yes.

Q. And I want you first of all to tell the Commission whether from your knowledge and experience, you think Mr. Hill has gone about that the right way, and anything you have to say about the method he followed? A. His method is that which I follow as far as possible always. That is to base depreciation appropriations on actual history of the properties involved. Life tables I never had any more use for than was absolutely necessary, because they are a good many of them based on the published tables I refer to particularly, based on comparatively limited experience and I say where it's possible I prefer to do as Mr. Hill has done, study the particular properties that I am interested in, and determine their history and of course qualifying that as far as may be necessary by a consideration of the relation which the future may have to the past. Of course, that's all that is necessary, because rate cases are set up for future effectiveness.

Q. Now you of course had nothing to do with the preparation of Mr. Hill's work. He did that himself, didn't he? A. No, I only saw it very recently indeed.

Q. But you have gone over it with him since it was prepared. A. I have in a general way.

Q. What I want you to tell the Commission is how far you think the methods he had followed seem to be the sound and correct methods for the purpose in question. A. Why I don't feel that I could do that in detail, in any minute detail, at any rate, because I am not well acquainted with the property or its history, but his general method of taking costs where they are available, past costs, and of using percentages based on estimated life where necessary, I agree with and as far as life estimates are concerned, I find them without any exceptions that I now recall, consistent with what I believe to be good practice.

Q. Now the other branch of the subject I wanted to ask you about substantially the same thing from another view point. I want to ask you about the practice of other concerns, and what, judging from that is a proper allowance for a street railway Company for depreciation or rather for retirements on its depreciable property. Mr. Hill has figured out as his final result—he comes to a conclusion that is about 4% on the depreciable property of the Company. I want you to give the Commission the benefit of your experience and observation in that line. A. My experience has not been primarily concerned with percentages of depreciable property. In my organization our method has been to get up depreciation appropriations in a somewhat different way. We have been studying that question during my entire connection with the organization, and we have kept comulative records of experience of all of our managed companies. In the early days we had to devise some yard stick to which to apply. There were no valuations as such in those days, in fact the cost of properties in general were unknown, so we picked as a substitute the gross earnings as our basis of determining that, and our appropriations were fixed as a percentage of gross earnings, usually about 10%, depending on the type of property.

As it went on we found that that was not sufficiently accurate for our purposes because of the lack of a defin-

ite dividing line between depreciation and mantenance, so that be substituted a combination percentage of depreciation and maintenance together referred to the gross earnings of the properties.

Q. In other words, you found the most useful method of check one company by another was to add the maintenance and replacement charges, and see what ratio they bore to the gross income rather than to take either of these accounts separately, is that right? A. Yes. Not only useful, but it is the more practical method.

Q. Why was it more useful and more practical, in checking one company against another, to combine those two accounts, rather than to treat them separately? A. Because of the lack of uniformity in dividing up costs between maintenance and depreciation. Large properties will retire or renew much larger units of property charged to maintenance than small ones will, and if there is with the size of the property and with the character of the property, but a combination yields a fairly definite and comparative relation, not scientifically as accurate perhaps as a percentage of the physical property, but practically I think it is. There is so much uncertainty as to useful life, on which percentages are based that I am satisfied that the percentage that we use is a workable thing, and we have checked it in our experience of thirty odd years of operation and find that it does work.

Q. What is that percentage, Mr. Nash? A. For railway properties, nominal railway properties, about 25%. Light, power and gas are less somewhat.

Q. That is to say, according to your experience in order to be adequate, the allowance made for maintenance plus the allowance made for retirement ought to be about 25% of the gross income, is that right? A. 25% of a normal gross earnings or operating revenues.

Q. What do you mean by normal gross earnings? Do you mean when an adequate return is being made? A. Earnings which yield a reasonable return. That is railway properties of course many of them are not having adequate earnings and when their earnings are de-

ficient of course the depreciation and maintenance are still going on in substantially the same amounts, and correction must be made for that.

Q. You speak of railway properties, just what do you mean by that? Steam railroads? A. Electric railways, city and interurban systems.

Q. Have you yourself figured out approximately how your ratio applies to the $2,200,000.00 that Mr. Hill has figured for retirements and existing maintenance allowances of the United Railways & Electric Company of Baltimore? A. I have made some approximations, I mean adjustments, first with respect to the normal revenues of this property. I judge that the existing revenues are inadequate both because this case is being heard and because the showing of the company appears to be less than a normal return. Increasing revenues to an 8% return of the valuation, increasing taxes, depreciation allowance and some incidental allowances for further investment and possibly further service if it is needed, I have made a rough estimate of $20,000,000 as the normal annual revenues for this property.

Instead of applying 25% to it, I have given recognition to the fact that this property here does not have whole power supply facilities, in fact most of its power is purchased, and of course the earnings are just the same as if the power were generated and the facilities were available, and I have made allowance for that and reduced the percentage to 22 for this particular case.

Incidentally that is the percentage which we recommended in New York for the Surface Lines a considerable number of years ago which was approved by the Commission, surface lines, which bought, as I understand it, then a large part of its power as is the situation here.

22% applied to what I have estimated as the normal revenues shows a requirement for combined maintenance and depreciation of $4,400,000.00.

Deducting from that the normal maintenance expenditures of this company, and I have not taken 1926 or present rate of expenditure in particular, but have assumed, without knowing very much about it, a rough average of

the figures for about half dozen years and deducting them, this average from the total leaves an amount which is approximately the same as Mr. Hill has reached in his computations, about $2,200,000.00.

(Commissioner Harper) That would be about equally divided between maintenance and depreciation?

(The Witness) Nearly. Our general experience is that the two run fairly constant, but we ordinarily find depreciation a little larger.

Q. And you have already said, it depends very much on the individual bookkeeping of a Company as to whether it might throw a particular item into maintenance or depreciation, doesn't it? A. Very much indeed.

Q. And that's the reason you lump the two in making your estimate? A. But we found that depreciation alone of 10%, or what would be more nearly right for a railroad company, perhaps 12 is too indefinite. The practices of companies vary too widely.

CROSS-EXAMINATION

By Mr. Tingley:

Q. Mr. Nash, isn't it difficult to make an accurate estimate of the proper rate of depreciation for a company without making a personal study of its property and affairs? A. It is difficult, yes. What one must do in making any study is to determine first whether the property in question has appearances of being normal and reasonably consistent with the run of such properties of that general character.

Q. Would you say that this property appears to be well maintained? A. I have not seen enough of it to testify usefully, I think, with respect to that. Superficially what I have seen has been cars, that's about all and they seem to be well maintained.

Q. Have you seen enough of the property to be able to estimate its percent condition? A. No.

Q. As I understand it—all you have done is to check what you understand to be Mr. Hill's general method of having taken the experience of the Company as to its

retirements as a guide to what it will need in the future for retirements, and you have checked that method and found without checking his particular computations and estimates? A. Yes, and I have checked his results with what I think they should be on a property of this size and character, as I see its character in a general way.

Q. Now of the 60 more or less properties, that Stone and Webster manage, how many of those are street railway properties? A. Street railway properties or departments, I can't give you the exact figure, but somewhere nearly one-third. Perhaps 15 or 20.

Q. 15 or 20 street railway properties? Can you name them? A. If you would like that list, I can get it for you.

Q. Yes, I would like to have it. A. Baton Rogue, Electric Company.

Cape Breton Electric Company, Novia Scotia.

Q. These are all street railways? A. Street railway companies or having street railway departments.

Columbus Electric & Power Co., Georgia.

Eastern Texas Electric Company.

El Paso Electric Railway.

Galveston-Houston Electric Railway.

Galveston Electric Company.

Houston Electric Company.

Jacksonville Traction Company.

Jamaica Public Service Company, British West Indies.

Northern Texas Traction Company.

Tarrant Traction Company.

(The Chairman) What state is that?

(The Witness) That is in Texas.

Pudget Sound Electric Company.

Pacific Northwest Traction Company.

Tacoma Railway & Power Company.

Savannah Electric Company.

Tampa Electric Company.

And there are a few other incidental minor railways involved in some of these companies which I haven't mentioned, but those are the principal ones.

Q. What is the rate of return being earned on its valuation by the Baton Rouge Company? A. The Baton Rouge Company has never had a valuation fixed by the Louisiana Commission so that I can't answer your question.

Q. What is the fare there? A. The fare is five cents.

Q. The Cape Breton Company, what's the rate of return being earned there? A. The answer to that is the same as to Baton Rouge. Wait a minute though. I think the valuation has been fixed by the Novia Scotia Commission.

Q. I am referring to the valuation of the street railway part of the property in each case. A. I understand. I can't tell you what is being earned on that valuation, but I am confident that it is less than a fair rate of return.

Q. What would you call a fair rate of return? A. Under the law in Novia Scotia 8 per cent. is the minimum return.

Q. I mean under the law of Maryland. A. I don't know that there is any law in Maryland.

Q. What fare is being charged in Cape Breton? A. I think it's 7½ cents or 8 and 7½ cents, but I am not sure of that.

Q. What return is the Columbus Electric and Power Company of Georgia earning? A. That I can't tell you because that is a combined railway and electric and gas property.

Q. What's the fare being charged? A. I think seven cents while there may be a ticket rate slightly less.

Q. What return is the Eastern Texas Company earn-

ing? A. That I can't tell you. That's a combined property.

Q. What's the fare there? A. Either seven or eight cents, I don't remember which.

Q. What return does the El Paso Company earn? A. That is not known.

Q. What is the fare in El Paso? A. I think seven cents.

Q. How about the Galveston-Houston? A. That has never had a valuation and its return is below normal. Just what I don't know.

Q. What's the fare? A. That is an interurban line with a mileage system of fares.

Q. How about the Galveston Electric Company? A. The Galveston Company I think is charging six cents and is seeking a higher fare at present.

Q. What return is it earning on its valuation, do you know? A. I don't know.

Q. How about the Houston Company? A. The Houston Company has a seven-cent fare, had a valuation fixed in the Federal Court two years ago. Incidentally in that case the Court approved a 4½ per cent. division on that valuation for depreciation after a very exhaustive study of the history of the Company going back to the very beginning in its electric operations, and 8% was accepted by both sides as a fair rate of return.

Q. Is it being earned? A. I don't think it is at the present time.

Q. I am sure it isn't. How about the Jacksonville Traction Company? A. Jacksonville has never had a valuation, and just at the present time, like any other utility in Florida, it is not earning a fair return upon its value.

Q. What is the fare in Jacksonville? A. The fare is ten cents cash, five tickets for 35 cents and a weekly pass. I am quoting all these from memory and I may not be quite right in some of them, but that's my recollection of

it. There again is a case of a company wherein or subsequent to a fare case, where before the Florida Commission a value was not fixed, but depreciation charges were prescribed, the interstate method prescribed and was followed strictly by the Commission, and a combination of maintenance and depreciation on that company since this order has been observed has been 26.2 per cent. of the gross earnings.

Q. What is the Jamaica Public Service Company earning on its property? A. I can't tell you.

Q. Do you know the rate of fare there? A. I don't know much about that property. It's a zone system, an English system of zone fares beginning at I think two pence.

Q. How about the Northern Texas Traction Company? A. That is a combined City and interurban system operating without a valuation.

Q. What is the fare there, do you know? A. The fare is a combination of ten cents cash, a weekly permit system under which passengers pay a certain small amount, I have forgotten what it is, I think somewhere around 25 to 35 cents plus a nickel, and there is an intermediate group ticket rate that I can't give you. That is a schedule that's been in effect for about six months.

Q. How about the Tarrant County Traction Company? A. That is an interurban line that I can't give you any very definite information about.

Q. How about the Puget Sound Electric Railway? A. That is an unfortunate company, not earning a fair return, although it had a valuation made a good many years ago.

Q. How much is it earning? A. Per cent.?

Q. Yes? A. I should say if it's as fortunate now as it has been for some little time about zero. Very intense automobile competition, bus lines and steamboat lines and everything else.

Q. What's the fare of the Puget Sound Company? A. That is a ticket system of varying rates. It's an interurban line between Seattle and Tacoma.

Q. How about the Pacific Northwest Traction Company? A. That is another interurban line that I have no very definite information that would be helpful.

Q. How about the Tacoma Railway and Power Company? A. That is not earning a fair return.

Q. How much is it earning? A. I can't tell you. It now has fare readjustments and franchise readjustments under negotiation with the City.

Q. What is the fare there? A. I can't tell you what it is at the moment. There have been various changes of prior fares, in fact they have been changed so frequently that I haven't kept in touch with them.

Q. How about the Savannah Electric Company? A. Savannah Electric Company is a railway department of a combined company having a seven cent fare.

Q. Fifteen for a dollar, isn't it? A. I think so.

Q. How about the Tampa Electric Company? A. Tampa has the old fashioned five cent fare still.

Q. Mr. Nash, do you know of any other public utility field where you could find a group of utilities like that where so large a percentage has never had a valuation made and the remainder were not earning 6 per cent. on the valuation? A. I don't think I quite understand your question.

Q. Do you know of any other character of utility where you could take a group of utilities like that and find so many where no valuation had ever been made and that as to the rest they were not earning 6 per cent? A. As far as valuation is concerned, I don't think there is very much difference as to classes of utilities. It may be that there have been fewer valuations of railways but I don't think that's true. As far as their earnings are concerned undoubtedly they are the least profitable of the public utility groups.

Q. Very few of them are earning 6 per cent., are they? A. Comparatively few.

(Mr. Tingley) That's all.

CROSS-EXAMINATION (Continued).

By Mr. Clark:

Q. Mr. Nash, I won't bother you long. I don't want to repeat any more than is absolutely necessary. You have served in the capacity of an expert for utilities for how many years? A. Well, as an expert, I suppose about fifteen or a little more.

Q. Your services as an expert have been confined to employment by utilities hasn't it? A. I think so. Practically so any way.

Q. There are some experts over the country who take the public viewpoint and testify for public bodies aren't there? A. I have heard a number of such.

Q. And the experts for the utilities and the experts for the public differ in many instances, as high as 25 and 50 per cent. in their conclusions? A. That depends on the experts. Some experts serve both sides and testify the same way. There are some whose opinions are quite as wide apart as you have stated.

Q. You mean to say that some of them testifying for both the public and the utilities at one time, bring down conclusions to suit the purposes? A. Why they bring down what they think are facts.

Q. Do I understand you to say that they change their methods depending upon whom they are employed by? A. Not at all.

Q. But experts do disagree to a very large percentage depending upon the employment? A. Why experts and other people disagree. The disagreement is not confined to experts.

(Mr. Howard) The question was depending on who employed them. Is that applicable to you?

NOTE: Question here reread by Reporter.

(The Witness) I misunderstood the question. That is true of some experts. There are some also of which it is not true, of course.

(Mr. Clark) I think that's all, Mr. Nash.

CROSS-EXAMINATION (Continued).

By Mr. Toole:

Q. Mr. Nash, has any of these companies that you mentioned gone through a receivership? A. I think one.

Q. Which one? A. Jacksonville Traction Company.

Q. What's the fare there? A. That's in the record.

Q. Ten cents, wasn't it? A. Ten cents with a weekly rate and a ticket rate in between.

Q. Is it out of the hands of a receiver now? A. Yes.

Q. Did that help it any going into the hands of a receiver? A. Why it depends upon what you mean by help.

Q. I mean weren't their finances better when they emerged? A. Than they were when they went in?

Q. Yes. A. They had more cash in their pocket if that is a measure of help, and there may have been other ways in which they were better off, but of course a receivership was simply a procedure for the protection of certain creditors that couldn't be paid at the time of the receivership. There was no reorganizing affected.

Q. How long were they in the hands of a receiver? A. Oh four or five years.

Q. And when they emerged was their rolling stock or equipment in better condition than when they went in. A. I couldn't tell you. I don't think there was any substantial difference.

Q. As a rule when a company goes in the hands of a receiver and stays there a long while is their equipment better or worse when they emerge? A. I would say it depends on the receiver.

Q. What is the custom? A. I don't know of any custom.

Q. You are not an expert on receivership? A. No sir.

Q. About Tacoma, is that the company that manu-

factures its own electric power? A. It manufactures a part of it and buys hydro power from other companies.

Q. Buys electric power? A. Yes.

Q. What does it manufacture? Steam? A. Yes.

Q. And can you recall now just from where it gets its power? A. Its hydro power you mean?

Q. Yes. A. From a group of plants in the State of Washington. Do you want them named?

Q. No, not exactly. I just want to get the nature of the plants. A. They are high head electric plants.

Q. Do they buy directly from these kind of super companies? A. The Tacoma Company buys from an affiliated company.

Q. And where does it buy from? A. It owns and operates the plants.

Q. Then there is no intervening company between the manufacturer and the Tacoma Company? A. I don't think there is in that case.

Q. In any of these other companies that you have mentioned, is there any intervening company that handles the electricity? A. I don't recall any.

Q. There is no company intervenes in all of those companies? A. If you want me to answer carefully that question I will take time to look it up, but I don't recall any cases that are significant at all.

Q. I don't want to give you too much trouble. A. I don't recall any, and I shouldn't attach any significance if there was.

(Mr. Toole) That's all.

RE-CROSS-EXAMINATION.

By Mr. Tingley:

Q. How many of the companies that are being operated by Stone and Webster are being allowed 25 per cent. for depreciation and maintenance? A. The companies operating under regulation where allowances have been

definitely fixed are very limited. I think I have mentioned already those that are fixed, that is, Jacksonville and Houston. I didn't mention Galveston where 4 per cent. was authorized. That was a court authorization, Federal Court again. I don't think other cases, where we have gone before commissions, I don't recall any where definite rates have been fixed. Some of the commissions have fixed fares, but without fixing either valuation or rate of return or depreciation provisions.

Q. In Houston the allowance is very much smaller, isn't it? A. 4½ per cent on the depreciable property.

Q. Which do you think is the sounder basis of computation? The valuation or the gross earnings? A. As I stated the gross earnings has certain practical advantages.

Q. For comparative purposes? A. Not only for comparative purposes, but for an automatic adjustment of the appropriations to fluctuations in business. That is a real advantage to the credit of the Company and its ability to get new money and expand. The percentage of property is fixed and it goes on just the same whether the business is good or bad or what, and it is, as I stated, based on estimates of useful life which are sometimes not dependable.

Q. Which is the method that you would say is more generally prescribed by commissions at the present time. A. The commissions more generally have adopted the percentage of property method. Both methods are used. That is a percentage of gross for combined maintenance and depreciation, percentage for depreciation, and in the case of allowance per car mile, which is quite similar to the gross earnings method, and in the case of gas and electric companies percentage of units of output. They are all in use, but as to the preponderance I think it is true that a percentage of property is more commonly used.

Q. And when you speak of percentage of property you mean that most of them use the original cost basis? A. I don't know about the original cost basis.

Q. Very few of them use the valuation basis? A. I don't know whether that's true or not.

Q. Aren't Galveston and Houston the only two that do in that group that you cited? A. Those are the only cases where percentages were applied to property value, and both of them were to appraised value. As to the propriety, your question is leading to that,——

Q. I will be glad to have you discuss that. A. Applying that it seems to me the rate base is the only logical thing to which to apply these percentages. I don't mean there may not be book accounting carried on on a different basis, that is, if the book value of the property, its fixed capital has not been recashed in terms of valuation and to agree with it, then as far as the books are concerned a piece of property that is retired ought to be written off at what it stands on the books and new property added at what it costs, and that in time, with increase in prices, and sustained higher prices would mean that if the appraised value is higher than the book value that the book value would gradually grow up to consistency but for purposes of rate making the appropriation must be based upon the rate base, otherwise if a piece of property is replaced in kind and it happens to cost more than the old added investment would be required without any change in rate base.

Q. That always has been the practice, hasn't it? A. What has been the practice?

Q. It always has been the practice in the past to retire at original cost and to meet any increase in the cost of the replacement to take that out of new capital hasn't it? A. That was the case of course back in the days when book cost or the actual cost and appraised value were fairly in close agreement. It didn't make very much difference and the question wasn't raised.

Q. Isn't it still generally the case? A. I think probably more as far as book accounting is concerned that that is the practice, in fact, it is the prescribed practice by the Interstate Commerce Commission and State commissions, but as to cases of rate case practice, where retirement appropriations are in question, I don't recall reading a single case where that has been carefully considered, and it's my business to read all the cases, I don't recall any where that point has been carefully argued

and that the cost basis of retirement rather than the replacement cost has been required for rate base purposes.

Q. If the cost basis has been required would you have considered the case carefully considered? A. I should think it would have been illogically considered.

(Mr. Tingley) That's all.

RE-CROSS EXAMINATION (Continued).

By Mr. Clark:

Q. Mr. Nash, another question please. I heard you refer to only one of these twenty companies seeking an increase in fares. Does that mean that there are no other companies in the group seeking an increase? A. No, I don't think so.

Q. In other words, there is only this one company seeking an increase? A. I don't know what that company was.

Q. That's the Galveston Company? A. Houston and Fort Worth have just had increases this year, and——

Q. I am not speaking of past increases. I am speaking now of pending applications. A. Well, if you are referring to the fact of increases, what's happened just recently is just as significant as what's going to happen in the future. I am trying to get your mind on what you are driving at, that's all.

Q. My question indicates what I am driving at, namely, how many companies now have applications for increases pending?

(Mr. Howard) You mean of those that he has been testifying about?

(Mr. Clark) Yes.

(The Witness) I can't tell you. The Tacoma Railway and Power Company I am sure, as I said, has its rates under trial, adjustments, and is trying to get to a satisfactory solution of an unprofitable situation, and whether there are others I don't just at the moment recall.

Q. Now how many of these companies in this group are earning as high as 6 per cent.? A. In most cases I said these are very largely combined companies, railway departments tied in with other branches of business, electric power or gas or something else, and further they haven't had valuations, most of them. What the railway departments are earning exactly is not known. But I would say that comparatively few of them are earning more than 6 per cent. There are some that I know are, but comparatively few. These are, as I say, most of them combined companies, and the operations of the combined companies are reasonably satisfactory, and in certain specific cases there has been a definite agreement between the company the community that they would rather have other rates raised where higher car fares are needed and have the car fares let alone. That's true in two cases where five cent fares are in effect.

Q. Isn't it a fact that not one of these companies is earning as much as a 6% return on book value or commission value as the case may be? A. No, I don't think so. Now Jacksonville, if I remember rightly, this last year has been a rather unfavorable one in Florida, but the year before Jacksonville did earn about eight per cent. on commission value. Well, it wasn't a commission value, but on a value that I think a commission would agree to.

RE-CROSS EXAMINATION (Continued).

By Mr. Toole:

Q. Let me ask you another question, Mr. Nash. I think you testified that you were associated with the Railway Owners Union? A. No, I don't belong to the Union. I am non-Union man.

Q. What I want to get at is this. You also testified that you were on a lot of commissions? A. Committees.

Q. Now is there any effort among this organization of electrical railway owners of a general organized movement to raise prices? A. I never heard of any. You say organized movement?

Q. Yes? A. I know of no organized movement.

Q. Is there a central point? A. No. The only centralizing that I know of is this. These railways, the most of them, belong to the National Association, and if they want information or statistics the smaller companies I speak of particularly bearing on their cases, or some of them, get statistics from the National Association instead of writing all over the country.

Q. I didn't mean your fifteen companies. I mean railways generally. A. I am speaking of railways generally.

Q. Now one more question, Mr. Nash. Do you think that motor coaches are making any considerable inroads in the business of the railway companies?

(Mr. Howard) You mean motor busses?

(Mr. Toole) Motor busses.

(The Witness) Are you speaking of in general? Both city and interurban?

Q. We will take first interurban? A. The interurban busses have made considerable inroads in interurban passenger revenues. Decided inroads.

Q. Now how about urban? A. Not so much in urban, but of course there have been a good many cases where city revenues have been reduced substantially by bus operation. In recent years that hasn't been as much because of regulation of busses, recognition that a local common carrier business ought to be in the hands of some one organization responsible for all of it which will permit co-ordination and all the advantages of minimum cost; that competition is, on city lines, gradually reducing.

Q. If there were no such regulations, suppose the different commissions would not regulate bus traffic and allow any individual to start a bus business, go into the passenger business, what would be the effect on the street car lines? A. Logically it would be reduced.

Q. Do you think they could subsist if individuals were allowed freely to engage in the carrying of passengers

by bus? A. On an economic basis they would most certainly be the one to survive instead of the busses, in any large city. In a small city, it's a question, but in a large city the economical logical basis of mass transportation is the street car or service on rails at any rate.

Q. Would you consider that to be true if a large bus company would start and give transfers and going over the city exactly like the street car? A. I most certainly do think so; that the railroad transportation is the backbone of large city service.

Q. It has been in the past of course, but now I am talking about this other thing that has never been tried yet. A. It has been tried.

(The Chairman) Mr. Toole, will you kindly inform the Commission how this line of questions is expected to help the Commission to determine whether the United Railways is entitled to an increase in fare?

(Mr. Toole) I want to find out if the United Railways had competition, if it wasn't protected by the Commission, I want to put it on the same basis as other business where it would have to compete, I want to see whether it would exist or not.

(The Chairman) I don't think that would help the Commission. The Commission is of the opinion that if there was indiscriminate bus competition, unregulated indiscriminate bus competition that the revenues of the United Railway would be so cut into that it would in a short time be in the hands of a receiver unless this Commission should authorize such an increase in fare as to keep it on its feet.

(Mr. Toole) That's what I was trying to find out. That's all, Mr. Nash.

(Mr. Sobeloff) No questions from me.

(Examination concluded.)

Thereupon—

W. FINDLAY DOWNS,

a witness of lawful age produced on behalf of the applicant, having first been duly sworn according to law, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Howard:

Q. Mr. Downs what business or profession are you engaged in? A. Why I am vice-president of Day and Zimmerman, Incorporated, of Philadelphia, engineers and operators.

Q. Day and Zimmerman you say are operators. Is their line of business similar to that of Stone and Webster? A. Yes, sir, I would say so.

Q. And both of you manage properties? A. Yes, we manage properties, and we build all we can get to build in the construction line. We investigate other properties, both public utility and industrial.

Q. And Day and Zimmerman is a firm or concern that has been engaged in that for some time, hasn't it? A. Yes, for about twenty years.

Q. And upon a large or a small scale? A. Well, we are getting larger all the time.

Q. You are one of the largest in the country? A. I don't think so. We are not as large as Stone and Webster, I don't believe, but maybe the both of us together are the largest.

Q. What are your own personal qualifications and experiences for that sort of work? A. I took the Lafayette College civil engineering course and then I took a special course in mechanical engineering at the Massachusetts Institute of Technology after I had worked several years, and then I have been in the operating end, some years with the United Gas Improvement Company, and on construction work out in California. I have also been in a good bit of appraisal work. I was three years

as assistant engineer of the Pennsylvania Public Service Commission. I was on one of the railroad valuations of the Atlantic Coast Line. I have been with Day and Zimmerman since 1919, and I have had charge of a good many phases of their activities, part of the time in connection with street railways and interurbans.

Q. So the operation of such utilities and the valuation of them has been a large part of your work, has it? A. Yes, and in connection with reporting on all utility properties, the principal experience of which I got at the Commission in that end, and subsequent to that Commission experience. I am not responsible for all the investigating work of Day and Zimmerman as it applies to utilities and industries.

Q. And does that include street railway companies and electric railways? A. Yes, sir.

Q. Now, Mr. Downs, I am going to ask you the two main questions I asked Mr. Nash. In the first place you heard Mr. Hill's testimony, haven't you? A. Yes.

Q. And you have been over his report? A. Yes, sir.

Q. And you know the methods he has followed in that? A. Yes, sir.

Q. Now I want you to tell the Commission whether from your knowledge and experience you would say that Mr. Hill has gone about that in the right way or not? A. Why, I think he has.

Q. What has he done? A. He has endeavored to get a picture of what has happened to this property in so far as he was able to find it, as I understand, and in particular he has, as I understand it, eliminated from his calculations that part of several questions of depreciation, mainly maintenance, he has taken all the maintenance and treated it as maintenance, as a matter of fact he hasn't treated maintenance at all, but in treating depreciation he has allowed, as I understand it, for the salvage of retired units that have taken place in the past, and he has also eliminated maintenance from the question entirely and has based it on the history, as I understand his report, for about perhaps 80 or 85 per

cent. of the property involved, and the rest of it he has based on a life basis, an estimated life of the unit.

Q. In your opinion is that a sound method and the method best adapted to get the correct result? A. I think it is. I think the history of the past and the conditions over that period should control one in providing for depreciation in the future, at least until such time as a situation would develop where that history would not be proved out, and what I mean by that is it would be a controllable thing by the authorities in control and go along with the history as experience in the future. There may be adjustments to make in it one way or the other up or down.

Q. Of course the whole subject of such a thing is to show how much a year is needed to keep the property in its present condition, isn't it? A. Absolutely.

Q. That's the purpose? A. And his object is confined solely to the property as it exists as valued by the Commission as I understand it. He, I believe, properly assumes that there will be no extensions to this property of very great magniture. If there are it depends on the character of those extensions and where they fit in on a program of depreciation as to the extent they would be provided for.

(Mr. Tingley) He doesn't contemplate retirements either, does he?

(The Witness) Oh, surely.

(Mr. Tingley) Of track, I mean.

(The Witness) Oh, surely.

(Mr. Tingley) I mean curtailment of the amount of track.

(The Witness) Only what has been shown by the past history of abandonment which I understand is about 2¼ miles a year which may come from different causes, public authorities of various sorts, changing conditions due to traffic or due to demands of the public in general for improvements.

Q. Now Mr. Downs your work that you have been en-

gaged in has brought you in touch more or less, hasn't it, with the practice of other companies and a general knowledge on the subject of what are proper or adequate allowances for retirements as well as maintenance? A. Yes, sir, I would say it had. I have seen a lot of them.

Q. I want you to give the Commission in your own words the benefit if your experience in that line with reference to companies that are of a character comparable with that of the railway here; what, according to your knowledge, has been found to be an adequate allowance to cover necessary replacements? A. Well, first, I think that very few companies have themselves known what was adequate, but when they commenced to dig in and find out my experience has been that it's a great deal more than what they have been appropriating from their earnings to meet the retirements of their property.

Q. In other words, they have generally underestimated it until experience showed them the mistake they are making, is that right? A. I think that is generally true. Of course, while they were going along and making money, and it wasn't a question of the value of the property, or rather the value of the property had not been ascertained, it didn't appear to them to be a serious matter at all.

(Mr. Markell) Seemed to be making money.

(The Witness) Yes.

(Mr. Tingley) That's just a suggestion.

(The Witness) Of course, that's obvious. We know they are not.

Q. Now my question was to give the Commission the benefit of your experience as to what rates had been generally found to be adequate for that purpose. A. Well in all the studies that I have made and in the experience of the properties that I know of as a result of such studies, and the experience on the relatively few properties that we have anything to do with from the standpoint of management —

Q. By relatively few you mean as compared with the vast mass of existing properties there is, don't you? A.

Yes. We don't manage very many railways. We try to keep away from it.

(Mr. Tingley) Why, Mr. Downs?

(The Witness) Because they are as a rule very difficult to get proper rates of return on the investment that is in them or on a proper valuation. But my experience has shown that when you analyze this thing from the standpoint of depreciation that around about 4 per cent really is the way most of them work out. Now they all don't get that in a valuation proceeding.

Q. You mean 4 per cent of the depreciable property, or 4 per cent of income or what? A. No, 4 per cent of the depreciable property.

Q. That would mean that about one-twenty-fifth of it on the average goes out each year, doesn't it? A. That's right. There have been several allowances of that nature by commissions in determining the total cost of service and in fixing the rate of fare.

Q. What do you mean of that nature? A. Around about 4 per cent of the depreciable property. They have applied it, it is true, in terms of dollars which in my judgment it always ought to be figured to avoid the confusion of percentages, but a good many of those I have had something to do with the amount allowed for depreciation in determining the total cost of service, and then in fixing the rate, it was about 3 per cent of the total valuation found by the commission.

Q. Including undepreciable property? A. Surely. Three per cent of the total.

Q. And that was the equivalent you say of 4 per cent of the depreciable property? A. Just about, yes.

(Commissioner Harper) How many of companies you know of combine maintenance and depreciation?

(The Witness) I think as a matter of business practically all of the companies combine maintenance and depreciation from their own operating records in appropriating from earnings the amount to take care of maintenance and depreciation. I think the majority of them do that, because they want a flexibility in that thing in case

they get into a particularly bad year they can stop their appropriation for depreciation and pay their bond interest, because surely the bond interest shouldn't be defaulted in just for one bad year when the depreciation can be side stepped.

Q. You heard Mr. Nash's testimony about a combination of maintenance and replacement allowance or depreciation furnishing a better basis for comparison between one company and another than merely to take the allowance that was nominally for depreciation or replacements. You heard that, didn't you? A. Yes, sir.

Q. Do you agree with Mr. Nash generally ? A. Oh, I think it's better from the standpoint of the man that's operating the property, yes sir, but I do think that the rate to determine it in the first instance is on the basis of the experience of the particular company in its retirements, and obviously that has nothing to do with the gross earnings in determining its retirements of physical property, but from a business standpoint it's much better to have it in terms of a total percentage of the gross earnings, I think, in appropriating from the total revenues an amount to take care of maintenance and depreciation.

Q. Looking at it in that way, a combination of the two, what would be the usual percent of gross of gross earnings, assuming that the gross earnings were adequate, to allow a proper amount for both maintenance and depreciation in the case of street railway companies? A. I think the same way that Mr. Nash does; that it runs about between 20 and 25 per cent of the gross earnings when such gross earnings are, as he calls it, normal for a particular property. Of course, it may be 40 per cent on some companies.

Q. That is the same when you say about 4 per cent on the property to be replaced is the standard allowance? A. Yes, that's right.

CROSS-EXAMINATION

By Mr. Tingley:

Q. When did you first see Mr. Hill's report, Mr. Downs? A. Why I would say that I saw the first draft of it three or four weeks ago.

Q. It bears date of October 25th. Did you see it before that time? A. I saw it three or four weeks ago, the original copy upon which the amount as contained in that report for the total depreciation is set forth, namely around $2,000,000.

Q. Have you personally checked the report? A. From what standpoint?

Q. From the standpoint as to the correctness of its results or just the correctness of the general methods pursued. A. Only from the standpoint that I think it is the proper way to approach it.

Q. But you haven't checked the detail of it?

(Mr. Howard) Haven't checked it up with the books, you mean?

(The Witness) Oh, no.

Q. When you say that 20 to 25 per cent is a proper allowance for maintenance and depreciation for a company, do you mean that that is typical of what is generally allowed companies? A. In a way it's typical of what's allowed them, but it's more typical of what their expense is.

Q. More typical of what they ought to have? A. Well what they get and what they ought to have is an entirely different thing.

Q. Do you recall that Mr. Zimmerman of Day & Zimmerman, in Case No. 1682 in 1919, also advocated that the depreciation allowance be sufficient to retire property at replacement cost instead of original cost? Are you familiar with that? A. I wasn't here then.

Q. Do you recall that the Commission said that case: "The Commission is not prepared at this time to accept the claim of the railway company that its depreciation reserve should be increased in order to meet the increased cost of renewing and replacing property in kind. The contention of the railway company involves a distinct departure from the long established practice with respect to the handling of this matter, the accounting rules of this Commission, as well as the accounting rules of most other regulatory bodies (so far as the Commission is in-

formed), providing that the difference between the original cost and the cost of renewal or replacement, where such latter cost is higher, should be charged to capital account." A. The valuation hadn't been fixed then.

Q. No the valuation had not been fixed. A. That makes all the difference in the world.

Q. If that valuation had been fixed do you think the Commission's answer would be different? A. I can't answer for the Commission.

Q. Do you think the rules differ for companies whose valuation had been fixed by a commission? A. The allowance for depreciation, yes, absolutely.

Q. Do you think that the method pursued by this Commission in determining the allowance, that is taking valuation or original cost as the base, do you think that that's different from the case of companies whose valuations have been completed? A. Yes, I know of several where the allowance for depreciation has been given to the Company on the basis of providing for the dollars to replace the units of property.

Q. By this Commission? A. Oh, no. I didn't undertake to say by this Commission.

Q. What is the highest rate of return of any of the street railway companies managed by Day & Zimmerman? A. Oh, I would say about three per cent.

Q. Have buses been substituted for street cars on any of the lines in the last few years? A. They have been put into operation from the standpoint of feeding the existing transportation system.

Q. They haven't been substituted for any of the existing systems? A. Not for systems, no.

Q. Do you think that bus operation will in the near future replace the street railway? A. How do you want me to answer that? Generally?

Q. Yes, generally. A. Oh, I think it will in a good many cases, small companies, but I don't think it will in a big city.

Q. How do you think that tendency will be affected by

increasing the street car fare to what the bus fare usually is? It will accellerate it, won't it? A. Why it may from one angle accellerate it.

Q. Is it the policy of Day & Zimmerman to substitute bus operation for street railway operation wherever they go? A. Your questions are awfully broad. Do you mean wherever they go?

Q. Yes. A. It's only their policy to substitute bus operation in connection with the street railways that we have to improve the service and to make more money.

Q. Are they considering at the present time as to any of the managed properties replacing street railway operation with bus operation? A. Entirely?

Q. Yes. A. No.

(Mr. Tingley) That's all.

CROSS-EXAMINATION (Continued).

By Mr. Clark:

Q. Mr. Downs, how many electric railway companies are being operated or managed by Day & Zimmerman? A. Oh, eight or ten.

Q. How often do you serve in the capacity of an expert along this line? A. I am not an expert.

Q. You are not qualifying today as an expert then? A. I don't like the word expert.

Q. Neither do I. A. You have heard the definition of an expert, haven't you?

(Mr. Tingley) There are several definitions. You mean the one about the fellow that fools with figures?

(The Witness) A person that concentrates more and more on less and less until he finally dis-concentrates.

Q. I haven't heard that one. Do I understand you, Mr. Downs, that there is a tendency to combine, from an operating viewpoint, to combine maintenance with depreciation? A. I don't know that there is any tendency towards it. It has always been that way. In making appropriations you mean to provide for maintenance and depreciation?

Q. Yes. A. I don't think there is any tendency towards that. I think that's the way it was always done from the standpoint of the operator.

Q. Is there a tendency today among the utilities to seek an allowance for depreciation to cover replacement costs as distinguished from retirement cost? A. You mean as distinguished from original cost?

Q. Yes. A. Because the retirement cost is the replacement cost.

Q. Where the retirement cost is the original cost. A. I would say it was a matter of discussion in every investigation that I have made and every time the question of allowance for depreciation comes up.

Q. Is a matter that's being discussed? A. Well, it has been.

Q. Mr. Zimmerman took that position as indicated in 1919 rate case here, did he not? A. Apparently did, yes.

Q. You were with Day & Zimmerman at that time, weren't you? A. May 1, 1919, is when I came with them.

Q. Aren't there some experts or authorities on this subject today contending that the depreciation allowance should cover the replacement cost? A. Sure. I think anybody that is looking at it soundly would have to conclude that that's the thing to do.

Q. Now, Mr. Downs, if that were true, assuming a company like this, that hasn't increased its track mileage for a long while, they could or it could maintain and replace its system indefinitely from the depreciation allowance?

(Mr. Markell) Why shouldn't it? That's what it's for.

(The Witness) Yes, sir. It couldn't maintain it. The maintenance is taken care of through the operation.

Q. I understand that. So that the need for outside capital would be very little if any? A. Yes, the need for outside capital would then practically be confined to refunding purposes and also to extensions of the property.

Q. Yes, but I am assuming a company such as ours where we don't have extensions worth speaking of. A.

And also to the improvements that were put on to the property over and above what was being replaced in a like kind and at the amount that is included in the valuation for it.

Q. But if they got a sufficient depreciation allowance to enable them to make all those improvements out of depreciation, then it wouldn't be necessary for them to make their improvements or betterments or capital extensions out of new money, would it? A. It might be. It might cost them a lot more when they came to make them than what these units are in the valuation today.

Q. If you take this particular company that has been allowed on an average for the past eight years $817,000 for depreciation, if they were to get an allowance for that same item of $2,200,000, and their capital requirements each year are only around $700,000, they could take care of all capital requirements out of the increased depreciation allowance, couldn't they? A. They could do it. They could use that money for that purpose in any one year if they wanted to, but the reserve for depreciation would still show the two million two.

Q. That would be tantamount to credits to capital account of the rate, wouldn't it? A. Out of the rate?

Q. The depreciation comes out of the rate. A. That's right.

Q. And if additions and betterments could be taken out of the depreciation reserve that would be out of the rate, wouldn't it? A. Yes, they can invest that money in the depreciation reserve for improvements if they want to, temporarily.

Q. Now if the difference between the retirement figure, we will say original cost here, and the replacement figure is a credit to capital, then that credit would be built up largely out of depreciation or out of the rate, wouldn't it?

(Mr. Markell) What does that mean?

(The Witness) I don't understand your question, but the way this Company does, as I understand it, and a good many companies have handled their retirements, is to take them out at the original cost as the amount which

they expended over and above the original cost for the particular retirement, which we will say is twice as much, they have issued new securities against.

Q. A credit to capital? A. Now here we are with a valuation of the Commission determined for its various units of property. A continuation of that policy is simply a dissipation of the stockholders equity in the property established by this Commission, whatever it is. I don't know that there is any. It simply means a dissipation of that, because the particular property retired is no different in kind than it was before, so when you come along and value it again, if you follow the policy that this Company has been following, you have the same value. That assumes of course a continuation of present prices. You have the same value, don't you, and you have been issuing obligations of the Company for this excess cost above the original cost, and you are absolutely wiping out whatever equity the stockholders have been giving them in this valuation above the original cost, can't you see that, and the stockholders won't have a penny.

Q. Then what would happen, to carry that out to its logical conclusion? What would happen to the equity? A. Disappear.

(Mr. Markell) It's being consumed in operation.

(The Chairman) What would happen, Mr. Downs—you have predicated your statement on the theory that prices would be maintained—but what would happen if there should be a slump in prices in the next ten years, a very material slump in prices and we had a new valuation, and we find that the property wasn't worth as much?

(The Witness) Well if you did that—that's a hypothetical question?

(The Chairman) Yes.

(The Witness) You might come down to the point where the present appropriation for depreciation would meet all the retirements in proper form.

(Mr. Tingley) Or be in excess of that.

(The Witness) Sure.

(Mr. Markell) If the base goes down, then the rate of the annual allowance should go down accordingly.

(Mr. Tingley) There is a good deal of a gamble in it then, isn't there?

(The Witness) A good deal of gamble in what?

(Mr. Tingley) In the valuation method of estimating depreciation?

(Mr. Markell) No more than there is in the valuation of property.

(The Witness) It's all a gamble in what the prices are going to be for the cost of retirements. That's the whole point. It's not a gamble in the method. It's a gamble as to what you are going to have to spend, and that's fairly certain, and the only way you can look at that is to look at that as it is.

(Mr. Clark) I don't want to argue with you any further. I think the record contains all I want on that line. Thank you.

CROSS-EXAMINATION (Continued).

By Mr. Sobeloff:

Q. Mr. Downs, would you care to express an opinion as to whether in the immediate future the cost of retiring a given piece of track or some other facility of the Company is likely to increase or decrease? The cost of retiring and replacing something similar? A. Well it's been fairly constant for four or five years, these costs, as far as they affect public utilities.

Q. It's not easy to answer a question of that sort? A. No, it isn't.

Q. But I thought maybe you were studying the tendencies of— A. They have been above and below, but the average is still pretty high and I don't see that they are going to come down very much. They might. You never know. They might go up.

Q. I was very much interested in your comment that the effect of requiring a Company to supplement with its own capital any difference between the allowance made

by the Commission out of the retirement fund and the actual cost of reproducing retired property would result in gradually dissipating the equity of the stockholders or the benefit that the stockholders got from a re-valuation? A. That's right.

Q. Now is that in your judgment really an injustice or a hardship to the stockholder in view of the fact that a great deal of this valuation occurred in just that way? A change in commodity prices? In other words, isn't the valuation considerably higher than the original cost to the stockholder? A. I don't know what the original cost to the stockholder was. But the Commission has found the value.

Q. The prices as of December 31st, 1923, are concededly much greater than the prices when they were purchased and installed? A. As far as prices go, yes.

Q. So that the stockholder got the advantage of this unearned increase in value? A. Well I don't know that he ever got the advantage of the unearned increase.

Q. Didn't he get that in the valuation? A. Not unless he earns on it. If he is not permitted to earn on it he hasn't got anything.

(Mr. Tingley) It is an equity, isn't it?

(The Witness) It's an equity, but it's unrealizable without being able to collect on it.

(Mr. Tingley) And it was created as a result of the valuation?

Q. The same economic forces which you say would result in dissipating this fund originally created it. It did not come from his pocket? A. They might have and they might have not. But what you say is true, it was created by the Commission to the extent that it was created.

Q. I thought that might have some bearing on the question of the justice or injustice of the rule that the Commission is following. A. Oh, no, I don't think so.

Q. I think it does.

(Commissioner Harper) How many electric railways did you say your Company manages?

(The Witness) We have ten. We manage York, Pennsylvania, Scranton, Altoona, Zanesville, Ohio, Lima, Ohio—

(Commissioner Harper) What did you say was the rate of return they earned?

(Mr. Tingley) The highest was 3%.

(The Witness) Scranton is just about breaking even on its operating expenses and taxes and maintenance of about 16 or 17% of the gross cost and we are able to set up very much for depreciation because we haven't got the earnings. Lima, Ohio, is making about 3%, I would say.

(Commissioner Harper) How does the rate of return on electric railway utilities compare with the other utilities?

(The Witness) About one-third. We are making eight or nine and in some cases 10% on light and power in certain places. I would say an average return of 8% where values have been found.

CROSS-EXAMINATION (Continued).

By Mr. Toole:

Q. I would like to ask Mr. Downs what are the fares of these companies? A. I think these are about right. We have a 7c fare in York, four tickets for a quarter. In Scranton there is an 8c fare, four tickets for 30c. Oil City there is a 7½c fare, I think. I am not positive about that one. Zanesville, Ohio, is 10c, four tickets for 25c. Lima, Ohio, 7c and four for a quarter, and Altoona is a straight 7c fare, and then these interurban properties it's figured on a different basis, 3c a mile, 3.6c.

Q. You are saying about the substitution of buses for electric cars. Has that happened on any of these seven or eight lines you mentioned? A. Not a substitution. There has been an augumentation.

Q. In the cities? A. Some of them. Not in Lima.

Q. Do you know of any lines that have superseded buses for electric cars? A. Completely.

Q. Yes, or nearly so. The majority? A. I just can't

recall, but I think there is one in the Northwest somewhere.

Q. Have you heard of Hagerstown, Md? A. Oh, yes. Have they substituted?

Q. They have substituted except the interurban cars. They have buses entirely. You didn't know that? A. No.

Q. And they have a 7½c fare on the buses all over the town.

Now one other question if you can tell me, hypothetical. Could you tell me in any appreciable way what would be the general depreciation of a plant worth $70,000,000, railway plant, excluding replacements and so on, the general depreciation over a period of five years? A. That would all depend on how well it was maintained.

Q. I know it would, but there is a certain average of maintenance, is there not, that ordinary companies ordinarily use? A. Well it might be nothing in a particular five-year period, and it might be pretty big in another five-year period. According to how the Company let maintenance slip.

Q. Suppose it was a company that wasn't very careful of its upkeep of its stock and so on? A. It might be pretty large. It might go down pretty rapidly.

Q. It would then tend to decrease its valuation? A. Well not necessarily. If you took that from it it might.

Q. Yes, if you would take it, for instance, if you would take an automobile and run it all around the country, even if it didn't break anything it wouldn't be worth the same as it was before, would it? A. No, that's right.

Q. Well, if you take a lot of rolling stock and run it around, even though nothing breaks or is replaced, would not the track over which that runs and this rolling stock be worth less in five years than it was before? A. If you didn't maintain it?

Q. If nothing broke, just the same as you run your automobile from here to New York, nothing would be broke on it, but wouldn't there be a certain depreciation in it

even though nothing broke or was replaced? A. Yes, surely.

Q. And that automobile wouldn't be worth as much as it was before, would it? A. No.

Q. And if you run it to California and back it would be still worse? A. That's right.

Q. Now if you apply that rule to electric cars, could you not apply that same rule to electric cars? You run them all over the city thousands of miles? A. Yes.

Q. Without breaking anything. Wouldn't their value be reduced? We are just assuming now, nothing broken or replaced, wouldn't there be just the same as an automobile a general depreciation? A. Not just the same, because they are an entirely different unit.

Q. I don't mean the depreciation to the same extent, but there would be a depreciation? A. Sure.

Q. And if that were carried on for a matter of five years it would be considerable, would it not? A. It might be or it might not be.

Q. But it would be enough to affect the valuation of the plant? A. It might be, yes.

EXAMINATION CONCLUDED.

NOTE: At 2.20 o'clock P. M. the Commission then adjourned until Friday, November 4th, 1927, at 10 o'clock A. M.

TENTH DAY.

(The Chairman) Mr. Howard, you were to let the Commission know whether you had any additional witnesses this morning.

(Mr. Howard) Yes, Mr. Chairman, it had been our intention or at least we were contemplating putting on one or possibly two witnesses about the rate of return, but in going over the testimony that was taken in the valuation case, where that was gone into very fully, and considering the fact that we had one of those witnesses repeat in general form the testimony at the same rate at the emergency hearing we concluded that there was enough in the record on that subject and there was no occasion for taking the time of the Commission in doing that, so all we wish to do this morning, Mr. Hill has looked up the matters that he was requested to investigate by Mr. Tingley and Mr. Sobeloff at the last session and is ready to give that information.

Thereupon—

BANCROFT HILL,

a witness of lawful age, produced on behalf of the applicant, having heretofore been duly sworn according to law, resumed the stand, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Howard:

Q. Mr. Hill, I believe you were asked at the last session to answer one or two questions that required that some further investigation on your part.

(Mr. Sobeloff) Mr. Chairman, I think it's only fair to state, I asked the question and indicated that possibly there was a substantial salvage on that bridge, but I would say that on further inquiry that the probability of the salvage is not going to be a very great item, that the whole thing is problematical, and probably it ought not to be considered. I told Mr. Hill that this morning.

(Mr. Howard) That is one of the matters I think Mr. Hill is to look up.

(The Chairman) Do I understand, Mr. Sobeloff, that the City is no longer interested in that proposition?

(Mr. Sobeloff) You mean interested in getting the bridge?

Of course the only way in which the question arose at all was this; the suggestion was made that the United was greatly damaged by this thing because part of its plant was wiped out. In one sense that's true. In another sense the United has been benefitted because instead of having a bridge which it must maintain at some expense annually it now is using the City's bridge which it did not contribute to the construction of, and the maintenance on that will not fall on them. They will only be required, I understand, to maintain their track.

(Mr. Howard) Mr. Sobeloff, I understood the question Mr. Hill was to look up and was to answer was that very one you put now; what the relative annual maintenance cost of the two were.

Q. (By Mr. Howard) Now beginning in any order that you choose, will you take up those matters? A. The annual maintenance I understand will be about $400 a year on that bridge.

(Mr. Sobeloff) On the new bridge?

(The Witness) No, the average maintenance was about $400 a year.

(Mr. Sobeloff) On the old Mount Washington Bridge.

(The Witness) Now it is my understanding that the Company will take over and be responsible for the graded park tax on that bridge as they were not on the old one, and I don't know just what that amounts to in money, Mr. Sobeloff, or whoever it is wants to know it.

(The Chairman) I think that's immaterial.

(The Witness) And they will be responsible for paving repairs on the bridge in the track area I understand.

(Mr. Sobeloff) Just as they are on any street?

(The Witness) That's right. I think that disposes of the Mt. Washington Bridge.

Q. Do you mean that those annual costs are at least equal to the others that you mentioned?

(Mr. Tingley) If you know.

(The Witness) No I don't know. I don't want to give an opinion on it. It's pretty hard to say.

Q. Whatever they are it would be an offset? A. It would be an offset.

(Mr. Sobeloff) When that bridge is removed the approaches will be made available for general real estate uses, won't they? There is a substantial piece of land there that you would have?

(The Witness) I think so. I think in the valuation, Mr. Sobeloff, that land was referred to in one place, I am quoting from memory because I haven't looked this up, the valuation was three or four years ago, was not available for other purposes, and not a very high rate was put on it, and I can give you that if you want.

(Mr. Sobeloff) You will get some utility from that that wasn't available while the bridge was in use?

(The Witness) The Chief Engineer tells me that there will be the cost of taking off the buttons and that sort of thing which will amount to something. I don't think any of that will be very much one way or the other. If you want any information on that I will be glad to get it for you.

(Mr. Sobeloff) I don't think it is material.

Q. And of course the land to the approaches that you refer to, the value of that was not included in the write off of the bridge that you mentioned? A. No. Now the next question was the deduction to easements for track retirements.

Q. Diminution in the total valuation of the easements due to track retirements, is that it? A. Yes.

(Mr. Tingley) Does that include track abandoned through re-routing?

(The Witness) That includes, Mr. Tingley, I think everything. That is, we tried to make it include everything.

(Mr. Tingley) Not only track abandoned but track abandoned through re-routing and is still there?

(The Witness) If the track is abandoned and it is never to be used again, yes.

(Mr. Tingley) And does that include all the track that has been abandoned through re-routing?

(The Witness) It does. At least it does as far as I can find out.

(Mr. Markell) It's all included in your exhibit.

(The Witness) It's what we show in here to be taken out.

(Mr. Tingley) Whether the track's been taken up or not?

(The Witness) Yes. If the track is considered not to be further useful or to be used again.

(Mr. Tingley) What's the test as to that?

(The Witness) The test as to that was the opinion of the Operating Department as to what the chance was of using it again.

(The Chairman) As a matter of fact, the track was abandoned as the result of an order of this Commission in the re-routing case, and in order to again use that track they would have to have an order from the Commission I should say.

(Mr. Tingley) It isn't now used and useful.

(The Witness) I didn't understand that to be the case, Mr. Chairman. I mean I didn't know.

(The Chairman) The Commission authorized, in approving the re-routing of a certain group of cars on a certain group of lines, it authorized the abandonment of the tracks, of the routes and the removal of the track, and I should assume before they would be able to use those tracks again they would have to get permission from

the Commission to put in the curves or to take the thing up again. Perhaps that's a legal question that I am not qualified to pass upon. At any rate I should think the United Railways would have to come to the Commission for permission to resume service on the lines abandoned by order of the Commission.

(The Witness) What I have done is this. I have taken the track which we show here as being either abandoned or taken up or reconstructed, of course reconstructed don't affect you, and I have found the easements under the various values for that, and then if there is any track that should have been taken out of here and wasn't why then the same thing applies to price as it does to the other, but I don't believe there is, Mr. Tingley.

(Mr. Tingley) I think there are several miles of it.

(The Witness) That's subject to check by the engineers of the Commission and if that's the case we will take that out.

Q. And if there is more track than you have found to be included under that item it would increase your experience of track retirements in your other tables, wouldn't it? A. By that much.

(Mr. Tingley) And it would also reduce the valuation?

(The Witness) By that much. The base on the exhibit which we have given you, and on the figures used in the Commission's opinion on the valuation of the $7,000,000, there is a reduction in easements of slightly less than $13,000 or about one-sixth of one per cent. of the $7,000,000 valuation for easements?

(The Witness) Yes sir.

(Mr. Tingley) And the only track out is that which has actually been taken up is it?

(The Witness) Yes.

Q. It that true? That the only track which you have considered as taken out is what was actually taken up? That was Mr. Tingley's question? A. Yes, that's true.

(Commissioner Harper) What value did you use in making that reduction?

(The Witness) Used $25,000 in the city and $17,692 in the old Annex and $12,500 in the new Annex.

(Mr. Tingley) You used the tax basis which the Court of Appeals could be used?

(The Witness) I used the basis used by the Commission in the opinion, Mr. Tingley.

(Mr. Tingley) That's right.

(Mr. Sobeloff) Can you tell me how many miles of track are subject to the 9% park tax in the old city?

(The Witness) No, I couldn't, Mr. Sobeloff. I couldn't even give you a guess on that now. I can find that out for you if you want and let you know.

(Mr. Sobeloff) I don't want to prolong your case for that purpose, but I would like to have it.

(The Witness) Now there was a question whether or not we had any rail salvage. I don't know whether you intended that to come up or not.

Q. That was a question whether any rail you treated as being retired is being used elsewhere? A. Yes. If there is any such rail there is not much. It is taken care of in reducing our maintenance, because I understand that anything that is good enough to use anywhere else there is no charge for it.

(Mr. Tingley) As a matter of fact, isn't it put in your maintenance at the salvage value?

(The Witness) I didn't think it was. Mr. Emmons says it is credited to the job as a credit to depreciation for whatever it may amount to and is charged for whatever it may amount to and is charged against maintenance. I was incorrect on that.

Now I had asked the Engineering Department for a figure as to what they considered that salvage might be in any case, and they gave me about 30c a foot, and I have used in the depreciation charge 50c, or about 40% more, and although that will not apply to retirements, the retirements are only about 15% of the whole, and I believe that that will cover any charge of that kind.

You also asked about the 105 cars and the 110 cars. The 105 cars are gone, not in existence. The frames on the 110 are being rebuilt, but only the frames, and that's only a very small part.

Now I want to make one more statement about Mr. Toole's $5.00. That is a typographical error I am sorry to say. It's only what we show there. The addition is correct.

Q. In other words, the total at the foot of your exhibit was correct, and that was a typewriting error in the middle of the text? A. That's right.

(Mr. Tingley) Another case of the books being in er ror?

(The Witness) Another case of the books being in error and confirms me of what I think of the books.

(Mr. Toole) Don't you think you have been in error in any other way?

(The Witness) I couldn't believe it, Mr. Toole.

(Mr. Toole) Impossible?

(The Witness) Yes.

Q. Mr. Toole thinks that $5.00 must be graft.

A. But it's our $5.00. I don't want to lose it.

There is one error, if I may correct it, here in the mimeographing, and I only do it because I would like to have things as correct as possible. In the amount of cars written off you will find right about the middle of page 23, 88 double truck closed cars. The car number is only 8, and you will find that the additions are correct. It's just a typographical error.

Q. Any thing you have to say, Mr. Hill? A. No.

(Mr. Tingley) The information about the re-routing track wasn't what we wanted, but we have it.

(The Witness) Mr. Tingley, I will get that for you.

(Mr. Tingley) No, we have it.

(The Witness) I gave you what I thought you wanted from the valuations of the Record Department and I gave you what I thought was correct.

(The Chairman) Any further questions, gentlemen?

NOTE: No response.

NOTE: At 10.30 o'clock, A. M., the Commission then adjourned until Tuesday, November 15th, 1927, at 10.00 o'clock, A. M.

ELEVENTH DAY.

(Mr. Tingley) If the Commission please, at the outset of our case I would like to read in evidence an extract from Mr. Hoyt's testimony on the rate of return to be allowed the United Railways, from Case No. 1915.

(The Chairman) What is the date of that case?

(Mr. Tingley) That's the Gas Company case in 1926, page No. 2633:

(Reading) "Q. I am not trying to spar with you or heckle you, but do you think then that the same rate of return should be fixed for the Consolidated Company, for the United Railways & Electric Company, and the Chesapeake & Potomac Telephone Company? A. You are asking me another thing. The same rate of return; you mean to say that a Commission in fixing rates of fare or what not should be guided—they must take into consideration what the traffic will bear, etc.

Q. Of course. A. But I would still say that you couldn't enlist the capital necessary to create the railways here, if there were no railways here, with an expectation of under 8%, and I would say the same thing about this company." (Meaning the Gas Company).

Thereupon—

H. CARL WOLF,

a witness of lawful age, produced on behalf of the Public Service Commission of Maryland, having heretofore been duly sworn according to law, and whose examination was suspended for the purpose of hearing other witnesses; resumed the stand, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Tingley:

Q. Mr. Wolf, have you made a study of the property and affairs of the United Railways and Electric Company in connection with its application for a 10c rate of fare? A. I have.

Q. Will you state to the Commission the results of that study and investigation? A. The study that we have made involves a review of the Company's testimony and claims, together with a study in order to arrive at what we think is a fair rate of fare to be charged. The first thing to be studied was the question of the value of the service which it seemed to me enters into the proper fare to be allowed by the Commission. In attacking the problem of the value of the service we first attempted to find out what rate of fare would become a burden on the fare riders, passengers of the United. For this purpose we made a review of the American Electric Railway Association Bulletin No. 116 which showed the effect of the variation of fare on revenue passengers of ten street railway companies in the country, and this has been gotten out in the form of an exhibit.

(Mr. Clark) What's the date of that bulletin?

(The Witness) September, 1926.

Q. Let me ask you one question before you introduce that in evidence. In speaking of rates that are burdensome do you intend to draw any distinction between rates that are burdensome and rates that equal the value of the service? A. Yes. It seems to me there is a difference. A rate may become burdensome before it equals the value of the service for which it's paid. Burdensomeness may be indicated by the point at which riding decreases with increases in fare in spite of the fact that an increase in revenues may result. An increase in revenues with an increase in fare would only tend to indicate that the economic limit had not been reached. In other words, the distinction that I draw is that a rate first becomes burdensome, then it comes to a point where the value of service has been reached, the value of service to the rate payer, to the passenger, and after that it reaches the economic limit. Now the first point that I make on this question of burdensomeness is that if an increased fare causes passengers to decrease it shows that to those passengers using the service the fare has become a burden. The economic limit may be higher than the value of the service and certainly higher than the point of burdensomeness.

Q. Mr. Wolf, have you prepared an exhibit entitled "Effect of Variation of Fare on Revenue Passengers of Street Railway Companies?" A. I have.

(Mr. Tingley) I ask that be introduced in evidence and marked People's Counsel Exhibit No. 19.

NOTE: Statement above referred to is here filed in evidence and marked, "People's Counsel Exhibit No. 19."

Q. Will you explain that exhibit to the Commission, Mr. Wolf? A. This exhibit indicates that with four exceptions every increase in fare resulted in a decrease in revenue passengers, and every decrease in fare resulted in an increase in revenue passengers. Local factors of course play an important part, but it is quite striking that the changes in riding follow so closely in an inverse ratio change in fare.

Q. From what source was this data taken, Mr. Wolf? A. American Electric Railway Association Bulletin No. 116 which was published I think as of September, 1926.

Q. Are there any items specifically that you want to direct the Commission's attention to in connection with that exhibit? A. It might be of interest to follow down the results on some of these systems. The Cleveland Railway Company, the first one outlined, during the course of this review went from a 4c fare to a 6c fare with 9 tokens for 50c. When it made its first increase in April, 1918, from a 4c fare with 3 tokens for 10c to a 4c fare with 7 tokens for 25c the revenue passengers fell off 1.6%.

Q. That was an increase in fare? A. That was an increase in fare. The next was also a slight increase with a slight increase in the number of passengers, being one of the four exceptions to the rule to which I referred a minute ago.

The next was a decrease in fare from a straight 5c fare to 11 tickets for 50c, and there resulted an increase of 16.7% in revenue passengers.

For the next two changes there were no comparable

months, because we tried to compare the months comparable under the new fare and under the old fare so as to eliminate as far as possible trends over a period of years.

(Mr. Howard) Would you mind stating, Mr. Wolf, what you mean by a comparable month and how you selected it?

(The Witness) In April, 1918, the fare changed from 4c, 3 tokens for 10c, to 4c, 7 tokens for 25c, and this latter fare held until August, 1918. For the purpose of arriving at the 1.6 shown in the right hand column we compared the months, April to July, 1918, with April to July, 1917.

(Mr. Howard) You took as many calendar months as were in common with the two and then averaged them?

(The Witness) That's right, on either side of the fare change. At no time did we consider more than one year. Some of these fares held for a period longer than one year, but we took only the one year on either side of the fare change.

(Mr. Howard) That's the method in each case?

(The Witness) Yes. Outside of the 16.7% increase and the 16.1% decrease shown in the right hand column in the Cleveland situation, and the 9.7% decrease, there were no large changes with changing fares.

The Twin City Rapid Transit Company showed that when the fare increased from 5 to 6c in August, 1920, there was a falling off of 3.8% in revenue passengers, and that winter it was again increased, in August, 1925, to 8c, with the token as before, and there was a further decrease of 10½%, and when the fare was again increased in January, 1926, to 8c, 6 tokens for 40c, there was a still further decrease of 7.3%.

The United Railways Company of St. Louis when it went from a 5 to 6c fare experienced a 3.7% falling off in passengers, and when it increased from a 6 to a 7c fare there was an increase of 13.1%, being another of the four exceptions to the rule.

Following on down, when the fare decreased from 8c

with two tokens for 15c to 7c straight fare there was an increase of 7.6% in revenue passengers.

The Oklahoma Railway Company had a somewhat similar experience to the Twin City Rapid Transit Company. When it increased from a 5 to a 7c fare there was a falling off of 9.2% in passengers. When it was further increased to 8c there was a further falling off of 14.4%.

The Androscoggin and Kennebec Railway Company shown on the next page is of interest in showing that when the fare increased from 9c, 6 tokens for 50c, to a 10c straight fare there was a falling off of 19.9% in the revenue passengers.

The Birmingham Railway, Light and Power Company when it increased its fare from 5 to 6c in September, 1919, experienced another of the four exceptions to the rule by having an increase of 13.1% in the revenue passengers. On the increase however from 6 to 7c there was a falling off of 15.1%, and with a further increase to 8c there was a still further falling off of 24.9%, which decrease was practically recouped with a decrease in fare in September, 1923, to 7c.

On the Connecticut Company, the next to the last, it increased its fare from 5 to 6c; the revenue passengers fell off 13.1%. When there was a still further increase to 6c zoned fare there was a further falling off of 3.9%. When the fare was increased from 6 to 10c there was a falling off of 17.3%, and practically the same amount was recouped with a lowering of the fare to 3 tokens for a quarter, and a still further recoupment with a lowering of the fare to 2 tokens for 15c, and a loss of 9.2% as the fare was increased again to 3 tokens for a quarter in February, 1924.

(Mr. Howard) Where was your fourth exception, Mr. Wolf? I didn't catch that.

(The Witness) I didn't point it out.

Q. In the San Antonio Company, isn't it? A. In the Dallas Company at the top of page 2 where there was an increase in fare with an increase of 2½% in revenue passengers.

Q. Mr. Wolf, as I understand it, the purpose of this exhibit is to show not that passenger revenue was not increased as a result of an increase in fares, but to show that an increase in fare to about the present fare of the United Railways and Electric Company results in a decrease in revenue passengers and that that would tend to indicate burdensomeness in rates? A. That's my thought, yes.

(Commissioner Harper) Do any of these exceptions occur where the increase was over 7c?

(The Witness) No, sir.

Q. Mr. Wolf, have you prepared an exhibit entitled "Charles Street Bus Line. Comparison of effect of Fare Changes on Revenue Passengers?" A. I have.

(Mr. Tingley) I ask that be introduced in evidence and marked, People's Counsel Exhibit No. 20.

NOTE: Statement above referred to is here filed in evidence and marked, "People's Counsel Exhibit No. 20."

(The Witness) This is a study of revenue passengers on the Charles Street Bus line by the months preceding and following fare changes made along the same line as the study in People's Counsel Exhibit No. 19.

This shows that when the fare was increased from 5 to 6c there was a 2.7% increase in revenue passengers, and when it was still further increased to 7c, 2 tokens for 13c, there was a decrease of .6%; that when it was still further increased to a straight 7c fare in January, 1920, there was an increase of 10.9%, and when the fare was still further increased to 10c in June, 1922, there was a falling off of 4.6% in the passengers. At the time that the 10.9% was experienced, namely in 1920, the Commission will recall that the street railway was experiencing its largest year so far as revenue passengers are concerned in its existence. Also when the 4.6% decrease was experienced after June, 1922, the rail lines in the city were showing an increased patronage as shown in the two lines at the bottom of this exhibit, where in 1923 for the year following June, 1922, as compared to the

year previous, there was an increase of 2.7% in the revenue passengers of the rail lines with no change in fares and a falling off of 4.6% in the revenue passengers of the Charles Street Bus line with an increase from 7 to 10c in the rate of fare.

Q. Have you any further comment that you want to make on that exhibit, Mr. Wolf? A. I believe not.

Q. Have you prepared an exhibit entitled, "Revenue Passengers Carried During the First Ten Months of 1927, Compared with the corresponding Period of 1926"? A. I have.

(Mr. Tingley) I ask that be introduced in evidence and marked, People's Counsel Exhibit No. 21.

NOTE: Statement above referred to is here filed in evidence and marked "People's Counsel Exhibit No. 21."

Q. Will you explain that exhibit, Mr. Wolf? A. This is a comparison of the revenue passengers carried by the East Fayette Street Bus route of the United Railways Company for the months of January to October, inclusive of 1927 compared with the same months in 1926, and shows that under a 7c fare, as is being charged, there was an increase of 347,620 revenue pasengers, the figure in the lower right hand corner, or 22% increase. This exhibit indicated to my mind that the fare on the Fayette Street Bus lines was not considered by the riders as a burdensome fare and hence an increase in passengers resulted. It also indicated to a slight extent where some of the decreased riders of the rail lines might be going.

Q. What is the fare on the East Fayette Street Bus line, Mr. Wolf? A. 7c straight. The fare was not changed at the time the last increase in rail line fare was given.

Q. Mr. Wolf, have you prepared a chart entitled, "Comparison of Cost of Living with Car Fare in Baltimore"? A. I have.

(Mr. Tingley) I ask that be introduced in evidence and marked, "People's Counsel Exhibit No. 22."

NOTE: Statement above referred to is here filed in

evidence and marked, "People's Counsel Exhibit No. 22."

(The Witness) This chart is very similar to one presented in the emergency case and is a comparison of the United States Bureau of Labor statistics all commodities wholesale index with the index of the average fare received by the United Railways and Electric Company, both curves considering 1913 on a basis of 100.

Before the War the 5c fare was commonly accepted as the value of the service and was the fare that had obtained for a number of years. At that time, 1913, the average fare received by the Company under the 5c fare was 4.867.

The purpose of this exhibit is to attempt to show what the present fare should be from a value of service standpoint as compared to the fare before the War. If a 5c fare was the value of the service before the War, and the value of the service has any relation to the cost of living in general, then the present fare being charged is about what the service is worth today.

Q. Now, Mr. Wolf, that chart indicates a very radical increase in the United States Bureau of Labor all commodities wholesale index costs during the period studied, doesn't it? A. Yes.

Q. It indicates a corresponding but much less pronounced increase in car fares over the same period, doesn't it? A. Yes.

Q. In connection with that increase do or do you not know that the Company was granted every increase in fares which it applied for during that period? A. It was with one possible exception; in 1919 there was a delay of three months in granting the 7c fare, the 6½c fare having been given by the Commission in October, 1919, whereas the Company had asked for a 7½c fare.

Q. So that as I understand it at the present time the all commodities wholesale index line is below the average fare line at the present time? A. That's right.

Q. Now this last line on the exhibit, this last line filled in, what does that indicate, Mr. Wolf? A. The solid line

to the right of 1927 shows the relative position of car fares in Baltimore City if the 10c fare were granted, it being assumed that the average fare received under that condition would be 9.68. That's with the straight 10c fare as asked for by the Company, and it would indicate that the relative position of fares would be very much above the cost of living, and hence place the value of the ride much below what the value of other commodities are.

Q. So that if there is any relationship between the value of a car ride and the value of other commodities this exhibit would indicate that the present fare is equal to the value of the service, would it not? A. That's right.

Q. Have you prepared another exhibit which explains that, Mr. Wolf, entitled "Comparison Between Cost of Living and Fares, 1913 to 1927"? A. Yes.

(Mr. Tingley) I ask that be introduced in evidence and marked, People's Counsel Exhibit No. 23.

NOTE: Statement above referred to is here filed in evidence and marked, "People's Counsel Exhibit No. 23."

(The Witness) That is simply the underlying data for the curve showing the index figures of the United States Bureau of Labor statistics in the second column and the index figures for the passenger fare in the right hand column, showing also in the middle column the dates at which the changes in fares took place.

Q. Have you prepared an exhibit entitled, "Present Fares in Cities having a Population of over 100,000"? A. I have.

(Mr. Tingley) I ask that be introduced in evidence and marked People's Counsel Exhibit No. 24.

NOTE: Statement above referred to is here filed in evidence and marked, "People's Counsel Exhibit No. 24."

(The Witness) This exhibit shows the fares at present being charged in all cities of the United States having a population of over 100,000. A study of that exhibit

shows that 48 out of the 81 cities listed have the same or a lower fare than Baltimore. Only three cities at all comparable to Baltimore in size have a higher fare, and one of these, namely Pittsburgh, the Sunday and weekly pass has been adopted in order to reduce the cost of riding to the public and to help sell the higher fare.

It's also interesting to note that only one city in the United States of over 100,000 population has a straight 10c fare without any reductions of any kind being charged, and this one, Worcester, Massachusetts, is not at all comparable to Baltimore.

Q. Is that the only comment that you want to make on that exhibit at this time, Mr. Wolf? A. I think so, except to point out for the sake of clarity that the second column headed, "Date Effective," is the date when the present fares as they now exist went into effect and not when some basic underlying changes were made. I refer to that on account of Boston, for example, which is listed as having the present fare effective on July 1, 1927, and at that time the only change made was the change in the token rate on certain limited routes. The 10c basic underlying fare has been in effect in Boston for some years.

(Mr. Tingley) If the Commission please, before introducing the next exhibit in evidence, I want to make just one comment which is this by way of explanation.

It is our belief and our contention that the present fare charged by the Company is the maximum limit of the worth of a car ride at the present time. In some of the ensuing exhibits we have introduced comparisons and studies indicating what the effect of certain fares would be on the rate of return earned by the Company; that if the present level of fares is not equal to the value of the service it is our contention and belief that the Company is entitled to a 6% rate of return, that is to say, it is entitled to a 6% rate of return if and only if it can earn it at rates inherently fair to the public. In these ensuing exhibits therefore, they are not to be construed in any sense that the Company is entitled to any increase in fares. The exhibits are introduced merely to indicate what in our belief are the only possible increases in fares which can enter into the consideration of the Commission in connection with the decision of the case.

Q. (By Mr. Tingley) Mr. Wolf, have you prepared an exhibit entitled "Comparison of Results of Street Railway Operation in 1926 in other cities comparable to Baltimore"? A. I have.

(Mr. Tingley) I ask that be introduced in evidence and marked People's Counsel Exhibit No. 25.

NOTE: Statement above referred to is here filed in evidence and marked, "People's Counsel Exhibit No. 25."

Q. Will you explain that exhibit, Mr. Wolf? A. The information upon which this exhibit is based was secured from the files of commissions in the various states in which these cities lie. There are in this table 11 cities considered as somewhat comparable to Baltimore, showing for those 11 cities the operating revenue, the operating expenses, depreciation and taxes, the net income, the rate of return produced by this net income, the base upon which that rate of return is computed and the present existing fare. The operating revenue is correct I believe and opens very little question after the following explanation is made. For Chicago I considered the surface lines only, not the elevated lines. In Los Angeles, the Los Angeles Railway Corporation and the Pacific Electric Railway Company in the City of Los Angeles are put together. In San Francisco we take the Market Street Railway Company. The Washington figures are for both the Capital Traction Company and the Washington Railway and Electric Company.

Operating expenses, depreciation and taxes in the second column are subject to the same comments and are I believe correct.

The third column showing net income is the deduction in each case of the figures in the second column from those in the first column and are not of course corrected for any other figures which might be included and possibly should be included to secure accurately the rate of return, but from my best knowledge and belief in each case, if any correction are to be made in order to arrive at the net income available for a proper rate of return, there would have to be made a deduction which would

still further lower the rates of return shown in the fourth column. Therefore, for the purpose of this exhibit, I believe that I have been more than fair as against the point we are trying to bring out.

(Mr. Howard) What does (b) opposite Cincinnati in that column mean, Mr. Wolf?

(The Witness) You will find that for Cincinnati the third column or net income does not exactly tally with the deduction of the second column from the first. The information we had was not quite clear as to what adjustment had been made as between the two, so we took the higher figure rather than the lower figure which would have resulted in a deduction from the figures in the second column from those of the first. I am not in position to explain the adjustment in any detail.

Q. The figure that you took would cause a higher rate of return than if the other figure had been used? A. That's right.

Q. What does that indicate as to the rate of return being earned by companies in cities comparable to Baltimore? A. According to the fourth column there is only one city in the country at all comparable to Baltimore which is earning over a 6% return and that city, namely Chicago, earned last year 6.27% on a 7c fare with 3 tokens for 20c, being lower than the Baltimore fare at the present time.

There are only five of these twelve cities which earned over 5% on their rate base, one of those five being Baltimore.

The lowest of these is Kansas City, which earned 1.82, and the next Los Angeles, which earned 3.06.

I might say in passing that according to my information there was no application for increased fares in any of these cities which application was denied last year, so that I take that the percentages shown here are the percentages experienced under the companies' conception of the fare which they ought to charge.

Q. This exhibit would indicate that the Baltimore company is earning a higher rate of return than most of the

other comparable cities of the country, wouldn't it? A. That's true.

(Mr. Howard) Would you mind explaining the base column, Mr. Wolf; how you got your figures in that?

(The Witness) Yes. That base column is made up to show the minimum rate base which, according to my information, the commission or commissions would have placed on the property. The $75,000,000 for Baltimore will be explained later as we go along, but is approximately equal to the Commission's valuation of $70,000,000 plus some allowance for easements, the amount of which of course is subject to a difference of opinion.

Boston $159,025,142 is the total investment in physical property only as reported by the trustees of the Boston Elevated Company and includes nothing for working capital, and so far as I can tell nothing for going value, but starts with the basis upon which the fare adjustment in Boston is ordinarily made, namely the face value of outstanding stocks and bonds of slightly less than $100,000,000 and adds thereto the investment of the city and the state in property which is leased to the Boston Elevated.

The Chicago surface lines valuation of $164,600,000 is what the Illinois Commission is now working upon, having been fixed originally in 1919, brought up to date in 1922, and again I believe in 1924 or '5, and contains book additions from that later date to the present.

Cincinnati is the amount of the fixed capital only. The same may be said of Cleveland. It might be mentioned here that both Cincinnati and Cleveland are working on their cost plus plans which insure to the stockholders a fair dividend, which dividend, plus fixed charges, when equated to its fixed capital figures, gives a rate of return of 4.16 for Cincinnati, and 4.35 for Cleveland.

Kansas City is arrived at by dividing by 75%, a figure of $17,500,000, which is the amount of the agreed value of the mortgage, upon which a new 30 year franchise granted by the city was based in order to arrive at the value of the property. I think you will find that $23,300,000 is equal to $17,500,000 divided by 75%.

(Mr. Howard) You mean you assume the mortgage as 75% of the value then?

(The Witness) Yes, sir. And that $23,300,000 is $5,500,000 less than the fixed capital as shown by the Company's books at the end of last year.

The figure for Los Angeles of $54,000 is a mean between the historical and reproduction costs of the two Companies, which mean is somewhat analagous to the practice of the California Commission in the past several cases it has decided.

The figure of $216,000,000 for Philadelphia was based on the minimum valuation of $200,000,000 found by the Commission as of 1920 but plus what additions of $16,000,000 since then, and does not take into account anything over and above the actual minimum, the inference being that the real value is something over and above the $216,000,000 as shown here.

(Mr. Clark) Is there anything in that base above the fixed capital?

(The Witness) The Pennsylvania Commission in 1922 found a minimum valuation of $200,000,000 as of 1920, and said that the fares proposed showed that they did not earn more than a fair return on that minimum valuation of $200,000,000, and hence that it was unnecessary for the Commission to find more closely the fair value.

Q. The Pennsylvania Commission found that both the Philadelphia and Pittsburgh Companies were entitled to earn 10%, did they not, Mr. Wolf? A. That's right.

Q. Has either of them ever earned it under the fares allowed? A. Neither of them has earned it.

Q. Has either of them earned six per cent? A. Not in 1926.

(Mr. Clark) What I meant by my question was whether there was anything above the fixed capital? In other words, any allowance for going value or easements, with respect to Philadelphia?

(The Witness) I know there was no allowance for easements, but as to going value it's impossible to say from

the Commission's opinion. The figure is considerably above the city's claim for the total value of the property, including the going value, and considerably below the Company's claim for that same item.

The Pittsburgh figure of $68,170,000 is arrived at also by adding to the Commission's finding of value as of 1919 or '20, the book additions since then.

The St. Louis figure if the value found by the Commission, and which value is now the subject of attack by I believe both the Company and the City. The Company claims a valuation upwards of $100,000,000. The Commission will recall that in the valuation case the analagy between St. Louis and Baltimore was brought out.

The San Francisco figure of $35,000,000 is arrived at in the same way, as was arrived at the Los Angeles figure of $54,000,000.

That Washington figure of $50,000,000 is arrived at by the process of considering the Washington Railway and Electric Company's property, on the same basis, as was used by the Court in fixing the value of the Capital Traction Company. If that principle were carried out to its final analysis the value would be something higher than $50,000,000, but it's a matter of common knowledge that this is the figure, now being spoken of as the basis for a Consolidation of the rail lines.

Q. Mr. Wolf, Cincinnati and Cleveland are operating under service at cost contracts, are they now? A. That's right.

Q. And what does this exhibit show they are earning on the fair value of their property? A. 4.16% for Cincinnati, and 4.35 for Cleveland.

(Commissioner Harper) Mr. Wolf, do I understand that Cleveland with a higher gross, altho the base is only one-half that of Baltimore, that the return is less? Is that what the exhibits shows?

(The Witness) Yes, sir, the exhibit shows that with a higher gross in Cleveland and a rate base one-half as large as Baltimore, as shown in this statement, the return is 4.35 as against 5.67 for Baltimore.

(Commissioner Harper) What's the mileage of the Cleveland Railways, do you know, approximately?

(The Chairman) It's approximately the same as Baltimore.

(The Witness) I have it.

Q. Suppose you put it into the record? A. Four hundred and eleven miles.

Q. Almost the same as a T.

(The Chairman) Of course if these bases were increased, it would show a smaller rate of return?

(The Witness). Yes, sir. I tried all the way thru here, Mr. Chairman, and if I didn't do it I would like to have it pointed out so that I could do it, to show the maximum rate of return that any of these companies could possibly have earned last year.

Q. Is there any further comment that you have to make on that exhibit, Mr. Wolf? A. The Commission will recall, of course, Mr. Nash's and Mr. Down's testimony as to the rates of return being received by the Stone & Webster properties and the Day and Zimmerman properties over the country and I think that probably bears out very closely the results shown in this exhibit, namely, that the rates of return earned by street railway companies in the country, today are considerably less than 6%.

Q. Before leaving these exhibits I want to ask you one further question. In view of these exhibits and the data contained in them have you any comment to make as to the fair value of a car ride in Baltimore at the present time? A. I think that in view of the exhibits presented, in view of the service that is being presented today in Baltimore, in view of the cost of the car ride before the war, that the present service is worth just about what is being received for it.

Q. Now that chart study assumes that the same standard of service is being rendered at the present time that was rendered in 1913, doesn't it? A. That's right.

Q. Have you any comment to make as to the disparity

in the service being rendered now as compared with that rendered in 1913? A. I think probably the factors that were referred to in opening statements here as to the slowing down of street car service today, which slowing down was used as an example of what the Company is up against, in themselves tend to show that the worth of the service to the car-rider is decreasing. While it may be said that the Company cannot help traffic delays, cannot help over-loading as is being experienced, cannot help erratic headways that are being experienced, it might also be said that those very things tend to make the service worthless to the car-rider. He has to wait varying times for cars. He has to get in overloaded cars, and he has to take longer to get between any two points, and those things it seems to me make the service worth relatively less to him.

Q. Are those factors borne out by the reports filed by the Company as to its compliance to the Commission's standards? A. I think they are very closely borne out. All of our checks and all of our reports.

Q. So that in the chart which you filed you assume a similar or comparable standard of service today compared with that of 1913? A. That's right.

Q. But the actual indications are that the service is not comparable to it but is inferior to it? A. That would be my deduction.

Q. Mr. Wolf, have you prepared an exhibit entitled "Probable Trend of Business in 1928 as Affecting Revenue of The United Railways and Electric Company of Baltimore"? A. I have.

(Mr. Tingley) I ask that be introduced in evidence and marked People's Counsel Exhibit No. 26.

NOTE: Paper above referred to is here filed in evidence and marked People's Counsel Exhibit No. 26.

(The Witness) This is simply a comment for which I must assume entire responsibility as an attempt to picture what will be the probable trend of business in 1928 affecting the revenues of The United Railways and Electric Company of Baltimore, and if you will permit I might read it:

"(Reading) In order to fix a proper rate of fare it is necessary to consider carefully the probable business of the company for next year. Various factors are at work, some tending toward improved conditions and other toward poor conditions. During the present year the revenues of the company have fallen off, largely on account of three factors; first, unemployment; second, weather conditions (particularly in the summer months), and third, automobile competition. General business conditions ought to determine the effect of the first of these factors on next year's business; the law of averages would militate in favor of increased riding next year so far as the weather has any effect; and a study of the automobile industry would throw some light on the probable effect of this competition.

It is interesting first to see what some authorities think of the outlook for business next year. President Coolidge's statement issued on October 17th last would indicate that the Federal governmental authorities look forward with no misgivings to the future. Prophecies of outstanding business organizations as disclosed in recent issues of their bulletins may be summarized as follows:

Harvard Economic Service—Outlook for business now generally favorable. Apparently little more than expected seasonal decline in activity has taken place this summer, and this let down in industry and trade will be followed by autumn expansion.

Moody's Investors' Service—Boom in business is likely to come before another depression.

Babson Statistical Organization—Business men and investors should take a conservative position, but immediate outlook for business is moderately good.

National City Bank—The absence of any fundamentally unfavorable factors affords ground for confidence.

Guaranty Trust Company of N. Y.—Ample support for belief that brisk revival is on way.

National Bank of Commerce in N. Y.—Confidence in upturn of business has become fairly general.

The National Association of Manufacturers has given out a fairly optimistic picture of the future, as disclosed by the result of its annual survey of conditions in 22 lines of industry. Local contractors, who are wont to look to the amount of work coming out of architects' offices and projects upon which bids are asked, point to next year as having all the earmarks of the possibilities of increased activity in the building trades over this year. New industries are being brought to Baltimore at about the same rate as in the past, and existing industries are showing little tendency to retrenchment. The industrial electric power business has shown a healthy increase, as have telephone toll calls. Post office receipts, after a summer slump, are headed for last year's high points. The view is held in many quarters that the Mississippi flood of the past summer had a greater effect on Baltimore business than might be supposed. Whatever adverse effect it would have will be more than offset by improved conditions next year which will come with the recuperated purchasing power of the flood victims.

Automobile production has dropped off considerably during the present year, the probable output for 1927 being lower than for the past three years. If the new Ford car comes onto the market this year, production in 1928 will doubtless jump. There is some leg, however, between production and use, and hence the fewer machines manufactured this year would indicate less serious competition on the part of automobiles with street cars next year. The registration of automobiles in Maryland during the past two years would indicate that the peak of this automobile competition may be in sight. Lessened production this year would indicate that the peak of competition has been reached. Upon this basis, therefore, street car riding in 1928 should show a healthy increase over 1927.

From a review of all of these factors, and considering also the fact that 1928 will be a presidential year (although the effect of this on business is pretty generally discounted), I am of the opinion that 1928 will show an increase in revenue passengers unless an increased fare is granted which will offset all of the factors tending to improvement."

In other words I have stated and I have used in these exhibits a little more pessimistic point of view than I really felt. From an analysis of the situation it looks to me like 1928 is going to be a considerably improved year over 1927. After all of course that's anybody's guess.

Q. Mr. Wolf, have you an exhibit entitled "Still Up and Going Strong"? A. Yes.

(Mr. Tingley) I ask that be introduced in evidence and marked People's Counsel Exhibit No. 27.

NOTE: Cartoon above referred to is here filed in evidence and marked People's Counsel Exhibit No. 27.

(Mr. Howard) Do you think that proves anything, Mr. Tingley?

(Mr. Tingley) I am sure of it, Mr. Howard. Maybe it will be the only way of proving the 8% rate of return.

(The Witness) As the Commission will see that's simply a copy of a cartoon drawn originally for the Philadelphia Public Ledger and gives Mr. Chapin's idea of what a fine outlook is ahead of business.

Q. I think it speaks for itself, Mr. Wolf. A. Yes.

Q. Have you an exhibit giving the outline of a statement by President Coolidge as to business conditions in 1928? A. I have.

(Mr. Tingley) I ask that be introduced in evidence and marked People's Counsel Exhibit No. 28.

NOTE: Paper above referred to is here filed in evidence and marked People's Counsel Exhibit No. 28.

(The Witness) That's simply a clipping that doubtless everyone has read, being a review by Mr. Effary of the President's remark on the business trend.

Q. Will you summarize that, Mr. Wolf, or do you want to read from it? A. I think perhaps the statement has been pretty well read already, but it is pointed out in here that it is the President's view that the country is industrially and commercially as well if not better off

than it was in October last year; that the immediate situation is improving, and that while the future cannot be foretold the President sees absolutely nothing ahead to discourage any business man. Then he goes on to draw from the reports of the various Governmental departments what he thinks will be shown by the trend of business in the next several months, namely, that American business will improve and it is now fundamentally sound, having all the earmarks of the prospects of prosperity.

Q. Mr. Wolf, have you prepared an exhibit entitled "Estimate of Passenger Revenue for 1928 Assuming 1 Per Cent Increase over 1927 in Full Fare Passengers and Normal Trends in Other Passengers. Allowing for a one cent transfer charge and full fare for employees and concessionaires"? A. I have.

(Mr. Tingley) I ask that be introduced in evidence and marked People's Counsel Exhibit No. 29.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Exhibit No. 29.

(The Witness) A study of several combinations of fares was made in order to find the combination that would return to the Company something in excess of a 6% return on the fair value of its property, and also that would meet all the tests hitherto used by the Commission in determining to arrive at the proper amount of net income.

Q. This and the two succeeding exhibits assume that any increase in fare would not be beyond the value of the service? A. That's right. Not necessarily that an increase would not be burdensome, but that it might not be beyond the value of the service.

Q. That's correct. A. In this exhibit we have considered all of the fares as at present being charged with the addition of a one cent charge for transfers and a full charge for employees of the Company and concessionaires who are now riding free.

The first column of this exhibit shows the number of passengers estimated by the Company in its exhibit No. 24 expected for the year 1927, and while there might be

something to be said both ways on those figures, nevertheless I have adopted them on account of the fact that too little of 1927 is left to go very far one way or another.

For 1928 I have estimated a one per cent increase in the number of full fare passengers, making for the full eight cent fare 7,428,057 passengers, and for the token fare passengers 198,356,049, or a total full fare passengers of 205,784,106.

For the commutation riders in the first, second and third county zones, Bethlehem Steel employees and a few miscellaneous riders I have considered what seemed to me normal increases as has been experienced during the last several years, and from that condition I arrive at a total of 2,600,000 for the first county zone, 270,000 for the second county and 45,000 for the third county zone, 1,600,000 Bethlehem Steel employees, and approximately the same which with round numbers has been taken as 8,000 miscellaneous riders, giving a total of 4,523,000 commutation riders in 1928.

(The Chairman) Do I understand, Mr. Wolf, that you have not taken for those first, second and third county zones, Bethlehem Steel and so on the one per cent increase?

(The Witness) No, sir. The Company's exhibits I think will show and certainly a study of the trend of the past few years, that the commutation riders have increased rather consistently as against either an increase or a decrease in the other riders, and hence these riders have been studied separately from the full fare riders. That of course is apparent on the face of it when we see the increased settlements that have taken place around the edge of the City limits. You would expect an increase in the first county zone riders. That is less pronounced further out and still less on the third county zone.

Q. I think Mr. Emmons called attention to the increase in suburban riding. A. He did. For the half fare riders I have assumed practically the same number in 1928 as in 1927. I perhaps might better have increased that by the same amount, namely, one per cent as were the adult

passengers increased, but there has been shown some tendency in the last few years for the half fare to remain about the same.

School tickets have been increased in accordance with the experience of the last three years, giving 3,860,000. Our grand total of number of passengers is 222,247,106. At the present fares these passengers would pay $16,200,200.

The number of transfer passengers has been increasing slightly, so that I estimated that there would be carried in 1928 without a charge 94,000,000 transfer passengers, this being the number of transfers that are lifted. A number of these transfer passengers are of course convenient riders who use the transfer for to ride only a few blocks because they can get it without cost. A number of those would of course be lost if a charge were made, the number lost depending largely upon the amount of the charge. With a one cent charge for transfers I have assumed that there would be a loss of 20 per cent, and I believe that this loss is very close to what would be experienced. This would leave the net number of transfers sold of 75,200,000, which at one cent would return to the Company $752,000.

In the Emergency Fare Case Mr. Nodder made a study of the effect on the Company's revenues if a charge were made for its employees and concessionaires. After the emergency hearing some adjustments were made in those figures, so that he now arrives at a figure which he will substantiate in his testimony of $171,883.

Q. Those adjustments were made in the light of some suggestions made in the Company's cross-examination, weren't they? A. That's right. The total of these three items, namely the present charges for the present class of fares of $16,200,200, $752,000 for a transfer charge, and $171,883 for the full fares for employees and concessionaires, gives a total of $17,124,083 as the gross revenues which would be experienced by the Company under this combination of fares, and that amount I believe to be a very fair estimate for 1928.

Q. Mr. Wolf, have you prepared an exhibit entitled

"Average Loading and Transfer Passengers on Harford Road Cars 6:00 to 9:00 A. M. and 4:00 to 7:00 P. M. on Typical Week Day"? A. I have.

(Mr. Tingley) I ask that be introduced in evidence and marked People's Counsel Exhibit No. 30.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Exhibit No. 30.

Q. Will you explain the purpose of that exhibit? A. When we got into this question of transfers we wanted to find out on whom the burden of paying the increased charge would fall.

Q. Transfer charge? A. Transfer charge would fall. Accordingly we selected one line leading from the suburbs into the City which seemed to us typical for this purpose and made a three day study in order to arrive at the number of long haul and short haul passengers using transfers.

On the left side of this exhibit are shown the average results for three days on the inbound traffic in the morning and on the right hand side are shown the average results outbound in the evening. I make no pretense about the results of this check being complete. It's simply an attempt to get at a picture, and another check may show slightly different results, but I believe that it's typical enough to illustrate the point that we have in mind.

For these three days which were typical days, being three normal week days in which there was no bad weather experienced, the average car between 6:00 and 9:00 o'clock in the morning arriving at North Avenue from the north carried 66 passengers. Twelve of those passengers left the car at North Avenue and four others boarded the car at North Avenue, so that 58 were on the car that left going south. Of these 58, five of them got off at Federal Street, none got out, so that there were 53 passengers on the car when it left Federal Street and arrived at Preston Street. At Preston Street three more of them got off, none got on, so that fifty passengers were on the car leaving Preston Street and arriving at Monument Street. At Monument Street five more passengers

boarded the car, so that fifty-five were on the car going south.

There we stopped our check, because we felt that the identity of the long and short haul passengers, so far as it could possibly be placed at the first four checking points, could not be determined at further points south.

A recapitulation of these figures at the bottom shows that there were 75 total passengers boarding the cars. I have considered that the passengers leaving the cars at North Avenue, at Federal Street, at Preston Street and at Monument Street were long haul passengers, namely passengers who had boarded the car before they had reached North Avenue and were hence riding from some distance out.

I have assumed that those passengers boarding the car at North Avenue and points south were short haul passengers because they could not have come from any great distance except the few passengers who might have ridden on checks across North Avenue after having come in from some longer outlying line.

On this basis there were twenty long haul passengers on each car and nine short haul passengers, or slightly more than twice as many long haul as short haul passengers.

The same reasoning and the same recapitulation for the evening traffic shows somewhat similar results except that the number of long haul passengers is slightly more than twice the number of short haul transfer passengers.

All of this shows to my mind that the long haul passenger would be the one on whom the cost of transfers would fall most heavily, and it was the purpose of the exhibit to try to find out where this cost of transfers would fall.

(Mr. Clark) How does this reflect a three day study?

(The Witness) I have taken the total number of cars in those hours for three days and worked it down to the average per car.

Q. Mr. Wolf, have you prepared a study entitled

"Estimated Passenger Revenue for 1928 with 8 Cent Full Fare and Five Cent County Fares"? A. I have.

(Mr. Tingley) I ask that be introduced in evidence and marked People's Counsel Exhibit No. 31.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Exhibit No. 31.

(The Witness) This is another combination of fares different from the one just described with the transfer charge. In this combination I have assumed a straight eight cent adult fare, a straight five cent commutation fare for all zones and all purposes with a half fare and school tickets as at present, namely, four cents and five cents respectively.

The number of full fare adult riders is estimated at 204,024,000 based on a 3.17 per cent decrease over 1926, which was the experience of the Company for the first nine months of 1927. It seems to me that this is conservative. We have based it on a slightly smaller number of passengers than are shown under the present fare, believing as I do that an increase in fare would have some tendency to discourage riding.

The total number of commutation fare riders is taken as being 4,523,000, and the same number of half fare and school ticket fares is taken as before.

This combination produces a total passenger revenue of $17,064,270 which is just $60,000 less than would be produced with the one cent transfer charge and full fares for employees and concessionaires. This figure of $17,064,270 is I believe conservative with the assumptions I have made.

(Mr. Clark) That exhibit doesn't contemplate token fares at all, does it? The second line there?

(The Witness) That's a straight eight cent fare. I used that item because in 1927 it is a reduced token fare. In 1928, according to this assumption, the token fare would be the same as the full fare.

(Mr. Clark) No token fares at all in this exhibit are there?

(The Witness) No reduced token fares.

(Mr. Clark) But the present token fares——

(The Witness) A token fare of eight cents.

(Mr. Clark) A flat fare of eight cents.

(The Witness) Yes.

(Mr. Clark) You mean two tokens then for sixteen cents.

(The Witness) That's right.

Q. Mr. Wolf, have you prepared an exhibit entitled "Estimate of Net Income and Rate of Return for 1928 Based on Present Fares with Charges of One Cent for Transfers and Full Fare for Employees and Concessionaires"? A. I have.

(Mr. Tingley) I ask that be introduced in evidence and marked People's Counsel Exhibit No. 32.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Exhibit No. 32.

(The Chairman) How does that difffer from No. 29?

(Mr. Tingley) That simply shows the rate of return that will be yielded by the charges.

(Mr. Howard) No. 29 gave the gross.

(Mr. Tingley) That's right.

(The Witness) This exhibit starts with the $17,124,083 of passenger revenue shown by Exhibit No. 29. To this amount is added $235,000 for other revenue which is the same as used by the Company in all of its exhibits, giving a total gross revenue of $17,359,083.

Operating Expenses have been estimated at $10,177,207 as shown as the bottom of the page. The Company estimated $10,264,000 for operating expenses for 1928 which included an allowance of $265,000 increase over 1927 present charged expenses for power and accident reserve. These amounts have been reduced by $100,000, leaving a balance of $10,164,000. My purposes in reducing these amounts are first that an increase of the acci-

dent reserve of $75,000 will be explained by Mr. Nodder. An increase of $90,000 has been allowed for power because of the fact and this fact only that I believe there is some possibility of the Company paying it. I don't believe that the amount should be increased, in fact I still believe, as I testified in the temporary rate case, that the amount should be reduced below what is now being paid on account of the clause in the Company's contract with the Power Company, but in the final analysis the amount that the Company will pay depend very largely on the ability of the Railway Company's representatives to withstand argument in its negotiations with the electric company. There is another factor which enters into it too, and that is the fact that the amount to be paid by the Consolidated Company for hydro-electric energy has not as yet been finally determined, and if that payment is excessive there will result some increased payment by the Railway Company to the Electric Company.

In order to work this statement down to a fair return I have added to operating expenses the figure of $13,207 which was shown by the Company in its exhibit No. 24. Depreciation has been taken on the same basis as is now being charged by the Company, namely five per cent of its revenue. Taxes are taken at $463,214 for property taxes, this being the same amount as was used by us in the temporary case and is $75,000 lower than that used by the Company. The same statements apply here I believe as applied in the emergency case, namely, that there is strong likelihood of the $75,000 increase not being experienced on account of the fact that the State Tax Commission still has to set the valuation on the capital stock of the Company, and if it sets an amount equal to the present assessment there will be no increase at all. Of course the Commission in finally passing upon the fare should know exactly how much increase is given, $75,000 will be the maximum increase; nothing will be the minimum increase. It may be between either. It may be either one of those figures. My own idea is it will be closer to nothing than the $75,000.

Park Tax is taken at 6.7% of passenger revenue although on the Company's experience of the past few years I think we might have been justified in taking a

slightly smaller percentage because of the fact that the increase in riding on the outlying lines is a little faster than the increase in riding on the lines which pay a park tax, but I have taken the same percentage as experienced this year, 6.7%. Income Tax is figured in the usual way, arriving at $145,000.

This gives Total Operating Expenses, Depreciation and Taxes of $12,800,690, leaving an Operating Income of $4,596,393, to which is added $38,000 for Non-Operating Income, this being the amount which, according to the Company's Exhibit No. 24, is to be considered in arriving at the amount available for return. Hence $4,506,393 is the amount available for return, which is 6.13% on a rate base of $75,000,000. If deductions of $3,445,000 are taken there is left a net income of $1,151,393.

Q. Will you explain how you arrive at the rate base of $75,000,000, Mr. Wolf? A. Yes. The Commission set a value on the Company's property as of December 31st, 1923, of $70,000,000 plus $7,000,000 for easements. The $70,000,000 is very close to the Commission's estimated cost of reproduction less depreciation, and hence it is fair to assume it seems to me that the value would fluctuate somewhat with changes in the level of construction costs. Since the date of that valuation construction costs have decreased something over 3%. If this amount were allowed in its entirety the $70,000,000 as it then existed would hence shrink to $67,900,000. Since then of course there have been some increases in Fixed Capital. Those increases, according to the Company's books, have totalled over two and a half million dollars. According to Mr. Hill's corrections, in order to arrive at increases based on the valuation, it amounted to something over a million dollars. Mr. Nodder has made still further corrections which bring the total, with additions to be added to the rate base in the past three years and a half, of only $174,000. $174,000 added to the $67,900,000 would be $68,074,000. If the full allowance of the Commission as previously made for easements of $7,000,000 is shown, that would give a rate base of slightly over $75,000,000. If the allowance only as claimed by the People's Counsel in the easement case were made, the rate would be considerably less than $75,000,000, closer I believe to $72,000,000.

There will doubtless be made some additions to Fixed Capital in 1928, so that from all of these things, with the present status of the easement valuation, I do not believe that a rate base of more than $75,000,000 for 1928 can be assumed, and this is the base which I took and is I believe a fair one.

Q. Mr. Wolf, assuming that the value of the service warranted any increase in fares whatsoever, this exhibit would indicate that either a one cent transfer charge with full charge for employees and concessionaires or a straight eight cent fare with a five cent charge in the counties would yield in excess of a six per cent rate of return, wouldn't it? A. That's right.

Q. And the previous exhibit would indicate that that is more than the companies situated in comparable cities to Baltimore are earning? A. That's right.

Q. Have you any further comment that you want to make on that exhibit, Mr. Wolf? A. I might just add that this 6.13 rate of return which will be experienced according to this estimate with the present fares plus a one cent transfer charge and full fare for employees and concessionaires would be 6.07 under the straight eight cent fare.

(Mr. Clark) Mr. Wolf, that increase in fixed capital for the past three and a half years, that is from December 31st, 1923, $174,000, did I get that figure right?

(The Witness) That's right.

(Mr. Clark) How is that made up?

(The Witness) Mr Nodder will explain that.

(Mr. Toole) Mr. Wolf, did you consider on that basis depreciation since 1923?

(The Witness) No, I deducted nothing in addition for depreciation since that time.

(Mr. Toole) There would be some depreciation since 1923, and if so that would lower that base, wouldn't it?

(The Witness) That property which existed in 1923 has undoubtedly depreciated. Since then there has been

additional new property put in to replace the old property, so that I am not prepared to say there would be any additional deduction.

(Mr. Toole) Didn't you add that into your book additions to capital?

(The Witness) No. Mr. Nodder will explain just how he got his $174,000, but I don't think he considered any depreciation.

Q. Mr. Wolf, have you prepared an exhibit entitled "Comparison of Net Income Estimated for 1928 with Tests Applied by Commission in 1924"? A. I have.

(Mr. Tingley) I ask that be introduced in evidence and marked People's Counsel Exhibit No. 33.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Exhibit No. 33.

(The Witness) This is only an effort to bring together some of the figures about which we have been talking as to the Net Income of the Company.

(Mr. Clark) Mr. Wolf, before you go one with that, I intended to ask you a while ago. You treated the income available for fair return as net income. Now here you use a different figure. Here you use the figure in the term the Company uses it.

(Mr. Howard) Are you speaking of No. 33 or No. 32, Mr. Clark?

(Mr. Clark) I forget which one it was. You called it net income and I always figured that figure of four million and something as gross income and the figure after deductions as the net income.

(The Witness) You are right. If I used that term I didn't mean to use it.

(Mr. Clark) It's Exhibit No. 25. You say net income $4,252,000. Now I have always used that figure as Gross Income.

(The Witness) Oh, as I explained then Mr. Clark it was very difficult to arrive at a wording which expressed anything.

(Mr. Clark) If you had carried that through I wouldn't have said anything, but here you are using the $1,293,000 as your Net Income.

(The Witness) Your point is very well taken.

(Mr. Clark) I will refer to this Exhibit No. 25, if I have occasion to refer to it, I will refer to $4,252,000 as Gross Income.

(The Witness) You are perfectly justified in doing that.

(Mr. Toole) Does that apply to Boston, Chicago and all the rest?

(The Witness) Yes, the same nomenclature would apply throughout.

Q. Will you comment on Exhibit No. 33, Mr. Wolf? A. Exhibit No. 32 showed a Net Income of $1,151,393. In arriving at that amount, as I stated, there had been made certain adjustments in order to show the amount available for the return. These adjustments are shown on the Company's Exhibit No. 24. In order to compare with the tests applied by the Commission in 1924 it is necessary to reinstate these adjustments because they are amounts that the Company really experienced in its Net Income in order to arrive at its Net Income, but they are amounts which should be deducted in order to get a fair return.

Reinstating these amounts we arrive at a net income comparable to that used in the Commission test of $1,293,814.

The Commission will recall that in previous cases it said that the minimum net income to be considered would be $1,000,000, and that the Company might be permitted, if it could, to earn a million and a half. It also stated at one time that one and one-third times fixed charges would be a test, which for 1928 would amount to $1,148,333.

In 1924 the Company presented an estimate which was used in the Commission's opinion which showed that the fares then asked for would produce a net income of $1,-

182,142. The Commission at the same time it spoke of one and one-third times fixed charges said that one and a half times fixed charges might be earned if possible.

The net income required to produce six per cent on the present fair value, namely, $75,000,000 as I have used it, is $1,055,000.

This exhibit shows therefore that if my estimates for 1928 are correct as shown on Exhibit No. 32 the Company will experience under either the eight cent fare or the present fares with one cent transfer a net income greater than any of the minimum tests applied by the Commission, namely $1,000,000 one and a third times fixed charges or the test to which Mr. Tingley referred, 6% on the present fair value.

Q. And more than the estimate made by the Commission in 1924 of $1,182,142. A. Correct.

Q. In other words, the net return would satisfy everything but the two maximum requirements set by the Commission in 1924? A. That's right.

(Mr. Clark) And those maximum requirements were to be the result of economy.

Q. Have those requirements ever been satisfied by any fares established by the Commission in the past? A. They have not.

Q. Mr. Wolf, have you prepared an exhibit entitled "Estimate of earnings under fares shown by Company Exhibit No. 24"—"corrected for operating expenses, depreciation and taxes"? A. I have.

(Mr. Tingley) I ask that be introduced in evidence and marked People's Counsel Exhibit No. 34.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Exhibit No. 34.

(The Witness) In the left hand column of this exhibit, down to the figure for the rate base are the Company's figures shown in its exhibit No. 24, by which it arrived at an amount of $5,578,079 available for return. This amount equated to a rate base of $75,000 to which refer-

ence was made a few minutes ago would give a rate of return of 7.44% in 1928.

In the right hand column, I have made certain adjustments which seemed to me to be reasonable. The operating expenses are estimated at $10,164,000, which figure includes the amount estimated by the Company with the exception that only $90,000. for power and 75——

Q. Additional you mean? A. Additional for power and $75,000 additional for accident reserve are included as explained a few minutes ago. The increase of $130,056 being the one cent per hour increase in wages is included.

Q. That's the amount which the Company has actually contracted for 1928? A. That's correct. If depreciation is taken on the same basis, as is now being charged, namely 5% of total revenues there would be a deduction for depreciation of $1,020,000. Property taxes are taken at $467,000 being the same as shown on our exhibit No. 22. Park Tax is taken as slightly less than 6.7% of the passenger revenue in this case, namely 6.63 as shown by note (D) at the foot of the page. This would give total deduction of $13,497,000 or a net operating income of $6,894,000. Non-operating income of $171,000 is included, and here let me say that this note to the right of $171,000 should be entitled (e)—instead of (d) giving a gross income of $7,065,000 and after deductions $3,445,000, leaving a net income of $3,620,000. The amount available for return is $6,936,000, being the $7,065,000 shown above less adjustments to get at the amount actually chargeable for returns. On a rate base of $75,000,000 this would give 9.25%

In other words, this exhibit would indicate that the Company might be expected under its proposed fare to earn 9.25%.

(Mr. Howard) Mr. Wolf, would you mind explaining now, note (c) what the item deduct $4,000 for return means?

(The Witness) In the Company's exhibit No. 24 there was a deduction of $3,786 to be made in order to arrive at the amount of the fair return. That, as shown in an

explanatory note, was the tax refund on Sparrow's Point bonds transferred to deductions. I took that figure as $4,000 because as you see I was getting all these figures in the right hand column in even thousands. In other words, that deduction is only what the Company itself said in its exhibit.

Q. Mr. Wolf, have you prepared an exhibit entitled "Estimate of earnings for years 1928, 1929, 1930, based on Company's estimate of future trend. Continuation of Company exhibit No. 24"? A. I have.

(Mr. Tingley) I ask that be introduced in evidence and marked People's Counsel Exhibit No. 35.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Exhibit No. 35.

(The Witness) This is a picture as I see it of what is ahead of us if the Company's estimates for the future are correct. The first column shows the figures used by the Company in its exhibits by which it arrived at a net available for return of $5,578,079, which would give a 7.11% return.

Q. On what rate base? A. On a rate base of $78,500,000.

Q. And that was taken from what? A. Exhibit No. 23 of the Company shows a rate base for 1927 of $78,040,000. There is bound to be some increased capital, and I have assumed that for the next three years at $500,000.

Something was said in the Company's testimony as to the prospects of a 3% decrease in revenues for the next several years, after a 5% decrease for next year occasioned partly by the increased fare.

Something was also said, in fact one of the Company's exhibits sets up a decrease of only 1% in operating expenses, hence in 1929 and '30, the second and third columns I have shown passenger revenue arrived at by decreasing the previous year's revenue 3%, using the same amount for other revenue $235,000.

Operating expenses are decreased one per cent from

the preceding years' figures and include a wage increase of one cent for each of those years.

Depreciation is taken at the Company's claim of $2,200,000 for 1928, plus 4% on additions, which 4% I understand to be the Company's claim.

This would give total operating expenses and depreciation for 1929 of $12,653,135; in 1930, $12,698,804, leaving a net operating revenue in 1929 of $7,133,185, and in 1930 of $1,500,966.

Taxes are taken at the Company's claim with an increase of $10,000 per year in 1929 and 1930 on account of the fact that increased capital may result in increased taxes.

Park Taxes taken are as used by the Company, 6.7% of passenger revenue.

Income tax is computed in the ordinary way.

The operating income therefore will be $5,003,925 in 1929 and $4,482,326 in 1930.

If to this amount is added the amount of non-operating income as estimated for next year, there is available for return in 1929, $5,041,925 and in 1930, $4,520,326.

If the Company's rate base continues to increase by an amount of $520,000 per year, these amounts available for returns in 1929 and 1930 would produce 6.38%, and 5.68% respectively.

Something was said, I believe, about the Company being entitled, in the Company's statements, to a minimum return of 7%, hence I assume when 1929's results are shown, the Company would apply for an increase in fare in 1930 in order to bring it above the 7% return. In order to do this, the base fare would have to be increased from 10 cents to 11 cents, which 11 cent fare would produce 7.08%. Of course that might be arrived at by a zone system, by some increase in commutation fares, plus charges for transfers or any number of combinations, but the base fare of 11 cents if the Company's predictions are true, will have to be experienced in 1930.

Q. The last line to the left-hand side, wage income, that should be wage increase, shouldn't it? A. That's right. That's a typographical error.

Q. Mr. Wolf, this exhibit would indicate that if the Company's apprehension as to the future are correct that an increase in fare to a straight fare of ten cents would only stem the tide for two years, is that correct? A. That's correct.

Q. Have you prepared an exhibit entitled "Results of operations in 1927 compared to operations in 1922? A. I have.

(Mr. Tingley) I ask that be introduced in evidence and marked People's Counsel Ex. No. 36.

NOTE: Statement referred to is here filed in evidence and marked People's Counsel Ex. No. 36.

(The Witness) Going back to the Company's Ex. No. 7C, it will be seen that operating revenue estimated for 1927 is $16,246,109. In view of the fact that this amount is so close to the amount actually experienced by the Company in 1922, it seemed to us that some comparison of results in these two years might be illuminating, so that the third column is showing 1927 results, corrected for 1922 operating costs.

Starting with the $16,246,109 operating revenue, operating expenses have been estimated at $10,195,997, arrived at as shown in the foot notes in this way. The actual operating expenses in 1922 were $10,429,123. The economies claimed to have been instigated since 1922 total $1,200,000, hence other things being equal 1927 operating expenses should have been $9,229,123. Since that time there has been an increased wage of three cents per hour, amounting to $390,000 on the present base and there has been a slight up-trend in the cost of living, which of course would reflect thruout the cost of operation, amounting to about 3% or $276,874. Adding these amounts, the operating expenses for 1927, would be $10,-195,997.

Taxes are taken the same as is estimated by the Company, namely, $1,626,472, leaving an operating income of

$4,423,640, and if non-operating income $171,000 is included, and deductions of $3,445,000 are made, there would be left net income of $1,149,640.

That is only of interest as showing the comparison between those two years.

Q. What comment would you make as to the significance of that exhibit, Mr. Wolf? A. I would conclude that if the property were operated as in 1922, and the economies claimed have been experienced, there would have been set aside this year a net income of $1,149,640.

Q. Mr. Wolf, have you prepared an exhibit entitled, "Comparison of costs of superintendence, in 1925 and 1926"? A. I have.

(Mr. Tingley) I ask that be introduced in evidence and marked People's Counsel Ex. No. 37.

NOTE: Paper just referred to here filed in evidence and marked People's Counsel Ex. No. 37.

NOTE: Commission adjourned for the purpose of taking a Short Recess.

AFTER SHORT RECESS.

DIRECT EXAMINATION.

(Continued)

By Mr. Tingley:

Q. Mr. Wolf, will you comment on exhibit No. 37. A. This is a comparison of the cost of superintendence in 1925 and 1926, taken from the Company's figures. Under each account as shown on the left is shown the amount of money charged in 1926 for superintendence and other expenses. The Commission will recall that each major account is divided into superintendence and a number of other sub-divisions. Ways and structures, for example, were charged with $66,356, for superintendence in 1926, and $786,176 for other expenses.

Following on across, superintendence in 1926 was $2,683 more than in 1925 or an increase of 4% while all other expenses decreased $117,147 or 14.9%.

Equipment was charged with $35,433 with superintendence and $882,297 for other expenses, being an increase of $6,292 or 17.7% for superintendence, as against $41,530 or 4.7% for other expenses.

Power showed a decrease of 3.1% for superintendence and an increase of 3.8% for other expenses.

Transportation showed an increase of 2.4% for superintendence and a decrease of 1.4% for other expenses.

Traffic showed a decrease of 11.4% for superintendence, the charges for other expenses being a credit to this account.

General and miscellaneous, which includes salaries and expenses of general officers only——

(Mr. Howard) You mean by that it includes only those——

(The Witness) It means under the head of superintendence for the amount of general and miscellaneous are included only the salaries and expenses of general officers, amounting to $138,366. In 1926 other general and miscellaneous expenses totalled $1,390,416, these figures being an increase of 9% for superintendence and 3.7% for other expenses.

In total, superintendence, in 1926, cost the Company $729,742, being an increase of $31,255 or 4.3% over 1925.

Other expenses were charged $9,225,277, which were actually $21,958 or 2% less than was experienced in 1925. In other words, while other expenses were decreasing $21,985, superintendence was increasing $31,255, so that the net result for 1926, on all operating expenses was actually $10,000 more than for the year previous.

Q. Mr. Wolf, have you prepared an exhibit entitled "Annual depreciation allowance equivalent to company's claims for condition of property as of December 31st, 1923"? A. I have.

(Mr. Tingley) I ask that be introduced in evidence and marked People's Counsel Ex. No. 38.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Ex. No. 38.

Q. Will you comment on that exhibit, Mr. Wolf? A. An attempt has been made in these next few exhibits to compare the claims for depreciations or condition of its property made by the Company in 1923 and those made at the present time of asking for an annual depreciation allowance.

Q. There has been a little change, hasn't there? A. Considerable. I might point out that in 1923, in the valuation of 1923, the Company's witnesses were careful to note that this claim for the condition of property was based only on the actual physical condition, and that no allowance for obsolescence or inadequacy was considered, but in the Commission's findings as of the same date, the Commission was careful to point out that the depreciation it considered was depreciation arising from whatever causes.

This exhibit No. 38 shows in the first column, the company's estimate to reproduce its property under the various items of track and roadway, etc, totalling $56,208,207 for depreciable property, $2,596,381 for land and right of way, which was not depreciated and $18,274,663 for overheads, which are likewise not depreciated, or a total of $77,079,251, cost to reproduce new.

(The Chairman) You say that was the company's claim?

(The Witness) Yes, this whole exhibit now, was the Company's claim. I have another one on the Commission's allowance.

(Mr. Clark) That claim was of 1923?

(The Witness) December 31st, 1923.

(Mr. Clark) And that was the Company's claim in the valuation case?

(The Witness) That's right.

(Commissioner Harper) That was for all property except easements?

(The Witness) Yes, sir, and going value. In the second column is shown the weighted accrued percentage for depreciation of each major account as given by the

Company's witnesses in that case. For example, 14.28% track and roadway and so on down, total 11.749% weighted for all the depreciable property and 8.56% for the total depreciable property, physical property and overheads.

In the next column is shown the age of that property, as of the valuation date so far as we made make it out. We went back and studied each item of each account to try to get at the year in which it was constructed and hence its ages as of the date of the valuation. We find for example, if our information and studies are correct, that the track and roadway at that time, at an average age of 15 years; that bridges, tressels and culverts had an average age of 20 years; electric system ten years; buildings, 20, and so on, showing a weighted average of the entire property of 14,232 years which would have been the same as if the whole property had been constructed in 1909.

The next column headed "Percent," "Average annual depreciation," is gotten at by dividing the accrued depreciation percent by the age and the last column, headed "Average annual depreciation dollars" is simply the multiplication of this percentage by the total cost to reproduce new.

What we are here trying to get at is the total amount of money which the company should have set aside each year from the time its property was constructed until December 31st, 1923, the date of its valuation, in order to have built up a reserve which would just equal the depreciation on the Company's property at that time. This works out to a weighted percentage of .825 for the depreciable property or $464,035, and to .502 on the total physical property, depreciable property and overhead, or a like amount of $464,035 per annum.

So that had the Company set aside then $454,035 per year in 1923, the date of the appraisal, it would have amounted to $6,604,116, as shown on the extreme right which was the total depreciation, admitted by the Company in its valuation case.

(Mr. Howard) You say, had it set aside that amount from what date?

(The Witness) From the beginning of the construction of its property.

(The Chairman) You said from 1923.

(The Witness) To 1923. The weighted year in which the property was built was 1909.

(The Chairman) Yes.

(The Witness) So that they set aside this amount of $464,000 from 1909 to 1923 inclusive, they would have had an amount equal to $6,604,000 or the same as claimed by the Company as the amount of its depreciation.

(Mr. Howard) You mean set that aside in addition to providing for actual retirements, don't you?

(The Witness) No, I am talking about a different thing, Mr. Howard. I am talking about depreciation now. This is the depreciation on this property that was valued on December 31st, 1923.

(Mr. Howard) On such of it as remained.

(The Witness) On such of it as existed.

(Mr. Markell) Just ignoring everything that passed out in the meanwhile?

(The Witness) Considering the property that was actually valued, and also considering the dollar had maintained the same value thruout that period.

(Mr. Tingley) Retirements will be covered in another exhibit, Mr. Howard.

(The Witness) This is covered as if there had been no retirements on this particular property during that period, that's right.

Q. Mr. Wolf, have you prepared an exhibit entitled, "Annual depreciation allowance equivalent to Commission's finding of condition of property as of December 31st, 1923"? A. I have.

(Mr. Tingley) I ask that that be introduced in evidence and marked People's Counsel's Ex. No. 39.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Ex. No. 39.

(The Witness) This exhibit is gotten up the same as exhibit No. 38 with the exception that there are used those figures actually found by the Commission as representing the fair cost to reproduce new and the accrued depreciation existing at that time. The Commission found that $68,481,685 was the fair cost to reproduce new the physical property and overhead, and that from this amount should be deducted, as shown on the extreme right of the exhibit, $8,441,250, accrued depreciation.

Had the dollar maintained its value thruout the life of the property, the Company should have set aside $582,186 per year in order to equal this depreciation found by the Commission, which depreciation, as I said a while ago, covered depreciation from whatever cause, not alone physical, but obsolescence and inadequacy. This is .85% of the cost to reproduce new, and this is the amount which should have been set aside annually to represent that depreciation.

(Commissioner Harper) Is that arrived at by multiplying the annual depreciation by the age of 14.5?

(The Witness) The final figure, Senator, is arrived at by dividing the annual depreciation in dollars by the cost to reproduce new to get a weighted percentage.

Q. Mr. Wolf, have you prepared an exhibit entitled "Annual depreciation allowance based on percentage considered in valuation cases No. 533"? A. I have.

(Mr. Tingley) I ask that be introduced in evidence and marked People's Counsel Ex. No. 40.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Exhibit No. 40.

(The Witness) This establishes an attempt to interpret the factors found in the last two exhibits into actual practice. Depreciation of course, should be set aside on original cost, rather than anything approaching reproduction cost or whatever figure the Commission may set as value. That's set out in our accounting rules and is the practice very generally followed by Commission.

The Company claimed on December 31st, 1923 that the original cost of its property was $68,158,908. This figure was vigorously disputed by People's Counsel and the Commission made no finding on it, obviously of course, because it was impossible to actually determine the original cost, but I have taken here what I think would be the maximum allowance.

To this figure I have added such additions to December 31st, 1926, an average for that year of $2,545,412, giving a total original cost of $70,704,320. Applying the percentage of .602 as found in Exhibit No. 38 based on Company's claim in the valuation case, the Company would be entitled to an annual depreciation of $425,640, and applying the percentage obtained as a result of the Commission's finding of conditions, which finding included depreciation from whatever cause, the Company would be entitled to an annual depreciation allowance of $600,987.

(Mr. Howard) Mr. Wolf, aren't you ignoring the time there and basing it only on accrued depreciation?

(The Witness) No, sir. I am considering here, Mr. Howard, the amount of money which the Company should set aside each year after 1923 in order to maintain its investment at that time.

(Mr. Howard) Presuming that all retirements are otherwise taken care of?

(The Witness) I presume that whatever retirements——

(Mr. Howard) Would come out of this?

(The Witness) Would come out of this.

Q. And would be taken care of? A. And would be taken care of from this amount if the Company's claim for depreciation and the Commission's claim for depreciation in 1923 were correct.

Q. Mr. Wolf, let me ask you just one other question. In comparing the service rendered by the Company in 1913 with that rendered by the Company today, did you take into consideration the fact that a longer ride can

be obtained on the properties of the Company at the present time than in 1913? A. I did.

Q. In other words that the property has been extended? A. I did.

(Mr. Tingley) Mr. Wolf is with you for cross-examination, Mr. Howard.

(Mr. Howard) Suppose those that are on the same side cross examine now and we can start to cross examine after recess.

(Mr. Benson) If your Honors please, I would like to ask him a few questions, but I don't know which side I am on.

CROSS EXAMINATION

By Mr. Benson:

Q. Mr. Wolf, without referring to the number of these particular exhibits, there are one or two or three particular exhibits that you prepared with the idea of showing the point at which an increase in carfare would be burdensome, and then there was another point where it would be what other term did you use? A. Exceed the value of the servce.

Q. Exceed the value of the service? A. Yes, sir.

Q. Now I want to ask you whether on the Halethorpe line, which is five and three-eighths miles, by air line from the center of Charles and Baltimore Streets to Halethorpe, as compared with the other lines running out into the suburbs, whether that isn't at present a burdensome fare on the Halethorpe line? A. Is that considering the two fares to Halethorpe?

Q. Yes? A. I didn't study that in particular, Senator Benson. It seems to me that a passenger out there has the same privilege of a passenger any place to ride anywhere on the Company's system, after he gets on the first fare zone.

Q. Well you happen to know that in the 1924 case the Commission decided the Sparrows Point case in a meas-

ure of fares from the center of Charles and Baltimore streets, don't you? A. Yes.

Q. Now I am asking you on that same measurement that was established by the Commission in the 1924 case, whether at present Halethorpe is not having comparatively burdensome fare with these other points? A. Well to give you a full answer I would like to apply some of the tests to that, Senator, as we applied in these other cases, as to whether or not the riding is falling off on that line.

It is the test that we attempted to apply to determine burdensomeness rather than a comparative length of ride, or a comparison of what the passenger might get.

Q. That wasn't applied in 1924 on that other line, was it? A. I don't recall that it was.

Q. Now let me ask you a question to see if I can get an answer out of you. If they increase the fare to 20 cents would that be a burdensome fare to Halethorpe? A. I would think so.

Q. Would it be beyond what the service is worth, in your opinion? A. I think it would be beyond what the present service is worth, yes.

Q. What would that be per mile, in round figures? It would be nearly four cents, wouldn't it? A. Taking it to the center that you took it.

Q. The same point that the Commission took it four years ago, isn't it? A. The same point that the Commission took the Dundalk case, yes.

Q. The extensions were made in 1924? A. Yes.

(Mr. Benson) That's all.

CROSS EXAMINATION

(Continued).

By Mr. Toole:

Q. Mr. Wolf, on exhibit No. 20 about the Charles Street but line, your exhibit shows that as they raised

the fare in most cases the number of riders fell off? A. That's right, there was one exception.

Q. Now, what I want to ask you is, is it not true that the people who patronize the Charles Street buses are better able to pay ten cents than the average rider? A. I think that's fair.

Q. And yet they fell off, being better able than the average rider? A. Yes.

Q. Now exhibit No. 25, San Francisco, you didn't investigate the San Francisco Municipal lines? A. No, I did not. There has been no finding of any kind as to value of any of its properties, except the report in the last few days of Mr. Wilcox, and I couldn't get any information on those.

Q. Have you any idea of what the Market Street Railway, what their rate of wages are? A. I think I have that. The Market Street Railway is paying 56c an hour for platform labor.

Q. That's in excess of the Baltimore rate. A. At the present time that's right.

Q. And the fare is five cents? A. I think there is now an application which has recently been made for an increase to six cents.

Q. But not for the Municipal Lines? A. I believe that's what precipitated the investigation that the City is now making with a view to perhaps taking over all lines.

Q. Now do you think it a rather healthy situation in San Francisco to have one line operated by the city, in competition with the other lines? A. I don't think competition in this utility business is ever of any material benefit where you have regulation.

Q. You rather believe then that it would be better for the City to take them all over? A. I wouldn't say that. I would say that proper regulation of whoever owns it would produce the best result.

Q. But obviously the report of the Municipal lines have a better showing than the privately owned lines,

isn't that true? A. I don't have those figures Mr. Toole. I couldn't speak of that a better showing? In what way do you mean?

Q. Well mostly everything. Don't you think that competition even with their added expense of operation by having diverse lines, don't you think that the Municipal line has been successful or has been responsible for keeping the five cent carfare in San Francisco? A. I think they have a five cent fare in Los Angeles too. Do they have a Municipal line there too? I wouldn't say the Municipal line was the answer to it.

Q. According to a newspaper report I read the other day, it seems that the five cent fare has vanished in Los Angeles, that New York and San Francisco are the only lines that have five cents and New York is subsidized, but there is a straight five cent fare in San Francisco on Municipal Lines and privately owned lines. A. I would take it that that was the fare they were able to earn a return on under regulation.

Q. But they get a return on the five cent fare? A. San Francisco gets a 5.37% return.

Q. Have you any figures that would show what return the municipal lines would get? A. No. I haven't any figures on that.

Q. I have the figures somewhere.

CROSS-EXAMINATION (Continued).

By Mr. Clark:

Q. Mr. Wolf, turn to your exhibit No. 24, will you please? A. Yes.

Q. How many cities are involved in that study. A. 81.

Q. Did I understand you to say that you found only one city over 100,000 population having a straight fare exceeding 7 cents? A. No, sir.

Q. What was it? A. Only one with a straight ten cent fare.

Q. In your studies of that subject did you find the tendency towards or from the flat fare in large cities? A. The tendency always to give a token fare or something in place of it such as passes.

Q. You found very few cities in which there was a flat fare without recognizing at all the frequent rider above the casual rider? A. For example, the only city, receiving a straight eight cent fare is Trenton, N. J. The only cities receiving a straight seven cent fare are Memphis, Tenn., and New Orleans, and Reading, Pa.

The only ones receiving a straight six cent fare are Duluth, Minn., and El Paso, Texas.

Q. Did you mean by a straight fare, a flat fare? A. without any tokens, that's right.

(Mr. Benson) Mr. Wolf, the ten cent fare in Boston is not limited to the city of Boston, but covers that Metropolitan era, doesn't it? It goes over into Cambridge and into a number of other cities adjacent?

(The Witness) That's right.

(Mr. Howard) Mr. Chairman, I would suggest that as Mr. Nodder's exhibits tie in with some of these exhibits, that Mr. Tingley put Mr. Nodder on before we cross-examine Mr. Wolf.

(Examination suspended.)

NOTE: The Commission then adjourned for the purpose of taking a Recess.

AFTER RECESS.

Thereupon—

CHARLES NODDER,

a witness of lawful age, produced on behalf of the Public Service Commission, having heretofore been duly sworn, according to law, and whose examination was suspended for the purpose of hearing other witnesses, resumed the stand, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Tingley:

Q. Mr. Nodder, have you prepared any exhibit entitled "Operating Revenues, expenses, non-operating revenues, deductions, from gross income and net income for the first six months of the years 1926 and 1927"? A. I have.

(Mr. Tingley) I ask that be introduced in evidence and marked People's Counsel Ex. No. 41.

NOTE: Statement above referred to here filed in evidence and marked People's Counsel Ex. No. 41.

Q. Mr. Nodder, will you comment on that exhibit? A. This exhibit consists of 12 sheets and is a detailed statement of revenues and expenses by months for the years 1926 and 1927.

The exhibit has been prepared in this form so that the Commission may have before it in much greater detail than is ordinarily shown by statements prepared in strict compliance with the Commission's classifications. It shows the income and expense accounts for those two years. The statements follow the Commission's classification, but each account is divided according to the several sources of reveue or the classes of expenditures as shown by detailed records carried by the Company.

The first sheet shows the sources of revenue for the first six months of the period. I might say, first of all that these 12 sheets are divided two ways. The first six cover the first six months of the year, and the last six cover the second six months of the year. It was just impractical to make such a long sheet that would show 12 comparative months on one sheet, so for that reason they have been divided in that manner. It will be quite proper to take sheet No. 7, for instance, and fasten it on the end of sheet No. 1 for a continuous year's study.

The first part of sheet No. 1 as I have already explained, covers the various sources of revenues. For instance, taking the first column, January, 1926, the first item is passenger revenue. That followed by special

car revenue, mail revenue, items received in the conscience fund and various other miscellaneous.

In the next line giving a total revenue from transportation in January for instance of $1,392,453.54.

Then follows revenues from other railway operations, car advertising, station privileges, parcel room receipts, rent of equipment, etc., showing the total operating revenues for the month of January of $1,403,387.09.

Then follow the operating expenses. On the first sheet the operating expenses are just shown by general accounts, the account ways and structures, the account equipment and power, etc. Details are shown of those operating expenses on the following sheets. For instance, Sheet No. 4 is a detail of the ways and structures. Sheet No. 4 also covers details of the equipment expenses.

Sheet No. 5 covers the expenditures for power, and on the same sheet are details of the account conducting transportation.

On sheet No. 6 details of the traffic account, and on the same sheet details of the general and miscellaneous accounts, and transportation for investment credit.

(Mr. Howard) What does that last thing mean by the way?

(The Witness) Transportation for investment credit is the account that's carried in the Commission's classification as a credit to the previous accounts for expenditures made generally in transportation of materials for construction work.

In other words if a work car, for instance, travels to do certain construction work, capital accounting, the cost of running that thing is not taken out individually out of these separate items. It's rather a hard thing to do, so one account, No. 7, general account, Transportation of investment, covers those expenditures. It's a credit against operating expenditures for construction work. It's covered by the Commission's classification.

(Mr. Clark) Mr. Nodder, what is meant there by conscience fund? How is that made up?

(Mr. Howard) That seems to be an insignificant item.

(Mr. Clark) But it's interesting.

(The witness) It's miscellaneous receipts from various people.

(Mr. Toole) Do they give their address, Mr. Nodder?

(The Witness) Sometimes, and sometimes not.

(Mr. Toole) Spring Grove?

Q. This isn't the corporations' conscience, but the individual's conscience? A. The individual's conscience. It is the return by a customer that has gipped the conductor out of a token and feels he owes the United something for that. In some cases they compute interest.

(Mr. Markell) What rate of return?

(Mr. Toole) Have you any record there of the Railway Conscience Fund?

(The Witness) No, the railway has no conscience, I understand. Now sheet No. 2 is a continuation of the income account, starting with taxes and the various classes of taxes are there set out. Deducting the taxes from the net operating revenue, which is brought forward to this sheet, gives an operating income on the next line. Then follows non-operating income, under which are detailed the various classes of non-operating income, income from lease of road, for instance, miscellaneous rent income and so on down the line.

Then follows deductions from gross income, covering rent of leased roads, miscellaneous rents, and that account is continued on sheet No. 3, interest on funded debt, interest on unfunded debt, and so on, the balance of the income accounts, and the last line on sheet No. 3, is the net income transferred to profit and loss.

As I have already explained, the same proceeding covers sheets 7 to 12. It's the same general outline as sheets one to six.

The only comment I might make on the last six sheets is that I have two totals for the year ended December 31, one before closing and one after closing. At the end

of the year there are always certain little adjustments that are made after everything is closed up to bring the books in accordance with actual facts, and I have used these two totals. The first one is the total of the previous 12 months' figures. I had to put that in to show those 12 months' additions and the last one I put in to match the figures of the annual report and the figures that have already been filed in this case.

Q. Mr. Nodder, have you prepared an exhibit entitled "Depreciation 1912 to August 31, 1927"? A. I have.

(Mr. Tingley) I ask that be introduced in evidence and marked People's Counsel Ex. No. 42.

NOTE: Statement above referred to here filed in evidence and marked People's Counsel Ex. No. 42.

Q. Will you explain that exhibit to the Commission, Mr. Nodder? A. This exhibit consists of four sheets and deals with depreciation. The first sheet of the exhibit is an analysis of the depreciation reserve at present on the Company's books from January 1, 1912, when the reserve was first started, to August 31, 1927. The first column of this sheet, headed "Provision," represent the amount charged to operating expenses for depreciation during the years shown, and correspondingly set up in the reserve. The next three columns show charges to the reserve for retirements of property, etc. The first column of this group are the charges actually made during each particular year. The column headed "Less items credited and transferred" represent adjustments which were subsequently made to the reserve, but which have been applied to the particular year to which they belong. These items are shown in detail on the bottom part of that first sheet.

The third column in that group is the revised charge against the reserve for the particular year. The next column, "Balance for respective years," shows the balance remaining in the reserve for the particular year after the credit is made for provisions, charges to operating expense, less retirements and the last column is an accumulated balance at the end of the particular year.

This shows that August 31, 1927, there was a balance in that reserve of $1,413,792.79.

(Mr. Howard) You carry that down and put it under the next preceeding column?

(The Witness) The next to the last column is the balance for the particular year. Those are all added. The last column is a comulative balance and of course naturally the two figures agree.

Sheet No. 2 is submitted to show the requirements of the Company to take care of its retirements, based on retirements actually made since the beginning of the depreciation reserve. The statement shows all retirements made both those charged against the reserve, those charged to profit and loss and those charged in suspense awaiting further disposition, the latter item consisting chiefly of the 319 cars which were burnt up and to which some discussion has been made about insurance in this case.

The first column in this sheet shows charges made against the depreciation reserve during the peorid January 1, 1912 to August 31, 1927 amounting to $9,124,-168.12.

Q. That's for retirements? A. That's for charges against the reserve as shown in sheet No. 1 of this exhibit.

To this has been added retirements which have been charged to profit and loss $426,558.44, and charges for retirements charged to the property abandoned charged up to operating expense account, $1,076,062.63.

The total charges during the period are shown in the next column, and aggregate $10,626,789.19.

Now from these figures have been eliminated two items. The first charges which have been made against the depreciation reserve and which are not retirements. The first one of these is the item of car truck payments shown in that column, $96,250, and the next one, the item of $1,252,330, is a proportion of the power bill which was charged to the depreciation reserve in connection with the sale of the Pratt Street Power House. In

other words, during the period as I recall, from 1921 to the middle of 1926, instead of charging the entire power bill against expenses, a proportion of it was charged to this depreciation reserve, and that amounted to about a million and a quarter.

(Mr. Clark) How does that show on the books?

(The Witness) It's charged against the depreciation reserve.

(Mr. Clark) Is that reflected in this balance here?

(The Witness) Yes sir.

(Mr. Clark) You mean this balance will be just that much more if it had not been for that charge?

(The Witness) That's correct. The next column, uncompleted work, charged against the reserve is shown as $572,792.36. This item represents charges for work which is not yet completed as its title implies.

(The Chairman) What's the character of the work?

(The Witness) I was just going to explain that, Mr. West. It might be advisable at this point to explain pust how accounting is made for the first item on this sheet, track reconstruction and renewal, etc. It is the practice of the Company in making a reconstruction or renewal of track to charge the entire amount as the work is progressing to an account, depreciation expenditures, which at the end of the year is charged to depreciation reserve. In other words that is the debit side of the depreciation reserve. At the conclusion of the project certain computations are made to determine the cost of the work which has been replaced or reconstructed, and the excess cost over this estimated original cost of the old work retired is taken out of the account and charged to fixed capital. In other words, the depreciation expenditures account, and in turn thru its being charged to the depreciation reserve, the depreciation reserve is a clearing account in part for work in progress, so that there are charges in this total column of sheet No. 2, there are certain charges in there for uncompleted work. One specific item I have in mind is this Bel Air Road job which is something like a quarter of a million dollars

charged in there and the work is not completed, and a part of that will subsequently be taken out of there and charged to fixed capital, and for that reason I have eliminated those items?

(Mr. Howard) Eliminated them toto?

(The Witness) Eliminated them in toto.

(Commissioner Harper) And for that reason you can't charge that amount to the depreciation reserve?

(The Witness) Can't charge that to the depreciation reserve, nor can you charge that to the fixed capital account.

(Mr. Clark) You mean by that that there is, you might say, a temporary loan made by the depreciation account until the construction is completed and then taken care of from new capital?

(The Witness) You might put it that way. It's merely a method of charging such stuff.

You first charge against this depreciation reserve and then take it out and charge it to fixed capital. It's not a matter of a loan exactly.

(The Chairman) So much of it as may be applicable to fixed capital?

(The Witness) That's correct.

(Mr. Clark) Or plant extensions?

(The Witness) That's correct. That of course only applies to items of reconstruction of renewals. Ordinary capital items which are not replacements or renewals are charged direct to fixed capital and do not enter into this at all.

(Mr. Clark) I see you have that coupled with items not retirements. In other words coupled with the $1,152,330.

(Tne Witness) That's right.

(Mr. Clark) Is that in the same class?

(The Witness) No, because I have eliminated those

two items from my total charges. The next column is the end of the column total and the two columns eliminating——

(Mr. Howard) With this item taken out altogether?

(The Witness) With that item taken out altogether.

(Mr. Clark) You have the total there $1,152,330, and then after that you couple——

(The Witness) Total charges against reserve are $10,626,000.

(Mr. Clark) I was looking at the Pratt Street Power House figure up there.

(The Witness) That entire item was eliminated.

(Mr. Clark) While we are here, let me get that straight in my mind. What does this mean in brackets, power bill?

(The Witness) That, as I have explained is a portion of the power bill, that is the bill rendered by the Consolidated for power supply. A portion of that bill was charged against the depreciation reserve rather than against operating expenses.

(Commissioner Harper) That portion wasn't included in operating expenses?

(The Witness) That's correct.

(Mr. Clark) That whole item refers to the sale of the Pratt Street Power House, doesn't it?

(The Witness) It refers to that, yes sir.

(Mr. Clark) And in writing that out of capital just what is the relation of the power bill to that transaction? The power house was sold?

(The Witness) And as a result of an agreement, I understand, between the United and the Consolidated, the details of which I am not very familiar with, a portion of that power bill subsequently was charged against the depreciation reserve as I understand it to take care of certain depreciation which the United agreed to take care of for a certain period after the sale of the power

house, so that instead of setting it up separately as depreciation, it was included in the power bill and a proportion of that power bill was charged against this power bill rather than charge it to operating expenses as power purchased.

(Mr. Clark) I just can't see where there should have been any charge to the depreciation reserve resulting from the sale of the power house or the power bill. Probably I am a little dense on that, but I just can't see where there is any charge to the depreciation reserve there, where there was a retirement from capital. As far as that is concerned, it was a sale, the Company received the money, but it should be a charge to capital account, but I can't see how there should be a charge to depreciation reserve. Just make that a little plainer if you can.

(The Witness) As I say, I am not terribly familiar with the details of that contract, but as I understand it, it's this way.

The contract, as I understand, provided a certain amount of depreciation for a period of years on the Pratt Street Power House plant should be borne by the United. That's my understanding of it. And instead of billing that separately, instead of the Consolidated billing that separately as a separate item, it entered into the rate per KWH at which the power was supplied or sold to the United. Now of that charge a certain amount was segregated as being the depreciation arising out of that contract, and as such was charged against the depreciation reserve.

(Mr. Clark) Do you know whose calculation that was? The Gas Company's or the Railway Company's?

(The Witness) I believe that the former Chief Auditor of the Commission had something to do with setting up that particular amount.

(Mr. Clark) You were just here giving the results as shown by the reports of the Commission?

(The Witness) By the Company's books.

(Mr. Clark) And the files of the Commission?

(The Witness) Yes, sir. No, this is shown by the records of the Company.

(Mr. Clark) Yes, by the records of the Company. Well, have you examined the whole matter enough beginning with the sale of the Power house up to the time these entries were made to be able to say to the Commission that you approve or disapprove of those entries?

(The Witness) I have not. They were approved by the former auditor and I haven't gone over that particular feature of it.

(Mr. Clark) Possibly I could be convinced, but I can't see where there should be any charge there of a million dollars to depreciation.

(The Witness) As a matter of fact, Mr. Clark, I am not defending it, but I have eliminated it against the total charge against the reserve if you will notice.

(Mr. Clark) Yes, but you say in that connection, without that elimination, the balance over here in the reserve account would be increased to that effect.

(The Witness) That's a fact. In other words, if that charge had not been charged against the depreciation reserve, the depreciation balance would show one million two four.

Q. That's arithmetic? A. That's arithmetic.

(Commissioner Harper) In your column of net, it's not included in it.

(The Witness) Yes, that's the net between the item total $1,626,789.19, and the total of the items $1,348,580, and $572,792.36, or a net of $8,705,416.83.

By dividing that amount of $8,705,000, by 15 and 8-12's years it shows the average retirements per year amount to $555,664.90, and that's the object of this exhibit, to show the average retirements over a period of fifteen, practically sixteen years.

(Mr. Clark) In bringing down that average you mean you have eliminated that power house matter?

(The Witness) Yes, sir, as I understand it a depre-

ciation allowance is an amount which is chargeable to expense, to return to the investor the amount of his investment consumed in operation during a given year. That's the fundamental basis of depreciation. This Commission's classification and most of the authorities require that depreciation be based on cost of property as opposed to values or other methods. In considering depreciation a difference too should be drawn between replacement reserves and a depreciation or retirement reserve. The former is intended to provide a reserve which at the expiration of the life of a piece of property will have accumulated sufficient funds to provide for a replacement of the property at the enhanced cost of new property. A depreciation or retirement reserve as I have stated is intended to be a return of the investment actually made and must necessarily be based on cost. As the Commission well knows the ideal way to compute depreciation is to do so on the basis of each separate item of property or equipment.

This, however, is impracticable and therefore various methods are devised to facilitate the preparation of such an estimated allowance. This Company has taken a 5% of its gross revenue. One way of checking such results is in an estimate such as is shown on sheet No. 2. When the Company begins business with new property, new equipment, etc., a considerable period lapses before any large amount of retirements occur. After the first cycle passes, retirements occur with fairly constant regularity and after that time the average amount of retirements experienced annually becomes a fairly good criterion of the actual amount of depreciation suffered.

This is the main reason for the submission of this exhibit. By 1912 when this depreciation reserve was started, this Company had passed the first cycle of newness, so to speak, and the average of its retirements during this period is a fairly reasonable estimate of what it's retirements will be, at least for the next few years. The difference between this average, that is the average of $555,000 shown by this exhibit and the amount charged to expenses in 1926, which was $825,000, or slightly under a quarter of a million, is a fair allowance, I believe, for anticipated retirements of property, items of which have not yet been retired, due to their cycle of life, exceeding the period cov-

ered by the Company's history, for instance, certain buildings.

The impracticability of providing a depreciation reserve to take care of future replacements at enhanced value is patent when it is considered that in practically no instance is a replacement made in kind. In case of track, for instance, seldom if ever, is track replaced exactly as torn up. Generally greater weight of track is laid, or changes made in type of paving, etc.

On the other hand, the fact that a structure will not be replaced at all, but will be abandoned, or as in the case of the Mt. Washington Bridge, of which we have already heard, maybe substituted by another structure at no cost at all to the Company and this shows the fallacy of this method. Thereby the utility gets a return on an enhanced valued of property and at the same time receives an amortization allowance at such increased prices. These things add to the uncertainty of any accurate forecast apart from being fundamentally in opposition to the entire theory of a return of actual cost of property extended in service.

Another feature in connection with the United's depreciation is the fact that due to its present method of accruing 5% of gross revenue as a depreciation allowance, it has been somewhat impracticable to follow the Commission's classification for property retired and not replaced. On page 19 of the Commission's classification the following instructions are given in connection with the retirement of property retired and not replaced. I am reading now from page 19 of the Commission's classification:

"When property other than equipment (which is provided for by account No. 41, 'equipment retired') is abandoned, demolished or otherwise retired from service and not replaced, the ledger value of the property retired shall be credited to the proper road and equipment account; account No. 443, 'accrued depreciation-road and equipment' shall be charged with the amount carried therein with respect to such property; proper account shall be taken of salvage and insurance; and the remainder, together with the expenses incident to the retirement, shall then be charged to profit and loss."

This requirement of the commission taken into consideration the fact that when property is abandoned and not replaced the loss occuring to the Company over and above

the amount of the depreciation provided in the reserve therefore, is a loss which the stockholder should be called upon to bear, thru its being charged to profit and loss. It is only where property is retired and replaced that the classification of the Commission requires charges to operating expenses be made for a balance of the cost of property which has already not been amortized thru a depreciation allowance.

This charge to operating expenses of course means that the rider pays for the retirement as opposed to the feature, that in cases of property retired and not replaced the stockholder bears the burden.

In this exhibit sheet No. 2 no separation has been made between these two classes of retirements, but in order to present to the Commission a picture of the total retirements made during this period, they have all been included under one heading. It might be pointed out, however, that the items in the second and third columns, that is retirements charged profit and loss, and retirements charged in suspense are items of this nature. They are not, however, the only items on the sheet. Even the elimination of these items aggregating as they do over a million and a half, would cause the average per year shown in the last column of this statement to be reduced to approximately $450,000.

Now go to sheet No. 3.

(Mr. Clark) Now, Mr. Nodder, before you go to Sheet No. 3, let me get another matter straightened out in my mind. Going back to Sheet No. 2, loss on cars sold and destroyed or as you say burnt up, $898,076.

(The Witness) Yes, sir.

(Mr. Clark) I see that has been added in the total of $1,330,845.

(The Witness) That's correct.

(Mr. Clark) Now that therefore is included in the $10,626,789?

(The Witness) Yes, sir.

(Mr. Clark) So what does that $10,626,789.00 represent? The total retirements?

(The Witness) That represents the total retirements with the exception of the two columns that I have eliminated. It's a combination of the total charges to the depreciation reserve and charges to profit and loss and suspense items for retirement. It's the total of those three items. In order to get to the net total retirements I had to eliminate the next two columns. In other words the entire sheet is a sort of a process of building up and tearing down, so to speak.

(Mr. Clark) What is the status now of that charge of $898,076?

(The Witness) That is now carried in suspense.

(Mr. Clark) It's still being carried in suspense?

(The Witness) It's still being carried in suspense.

(Mr. Clark) Why? Do you know?

(The Witness) Principally because if that million dollars there, which is the total of that column was charged to depreciation reserve, it would almost eliminate the depreciation reserve. It would bring it down to about four hundred thousand dollars.

(Mr. Clark) About six hundred thousand dollars.

(The Witness) No, less than that. The total if one million and 76 in suspense.

(Mr. Clark) Does that mean being held in suspense that there is any doubt as to where it should be charged?

(The Witness) I don't think so.

(Mr. Clark) It was used up in part before the depreciation reserve was set up?

(The Witness) That's correct. The item is being spread over a period of years, as an entry to profit and loss. In 1926, one hundred thousand dollars was charged to profit and loss of that item, or of an item of one million one hundred and 76, leaving one million and seventy-six in suspense.

(Commissioner Harper) You mean it will be wiped out eventually by being charged to profit and loss?

(The Witness) Yes, sir, instead of charging the entire amount immediately to profit and loss, and more or less breaking down that profit and loss account, it is being charged over a period of years.

(Mr. Clark) Is it simply being done for that reason, or as a matter of right? Should it be a burden on the present—

(The Witness) It's not a burden anywhere, because before the charge to profit and loss it's not an expense at all.

(Mr. Clark) It's not being carried to suspense then, not because it would reduce the depreciation reserve but because it's proper that it be amortized gradually over a period of years?

(The witness) That perhaps is the main reason.

(Mr. Clark) Has the method under which cars are purchased and the trust paid, anything to do with carrying that account in suspense?

(The Witness) Not that I know of. Now sheet No. 3 is a computation of what the reserve for depreciation would have amounted to if accruals had been made since 1899, that is the formation of the Company, on the same basis as is used at the present time, 5% of operating revenue. The first column of this exhibit shows operating revenue by years, since 1899 to August 31st of this year. The next column is a computation at 5% of the depreciation which would have been accrued if the 5% had been taken of operating revenue. The next column, retirements, shows the retirements made by the Company since 1899.

Taking these items separately, the last item of $8,705,-417, to which the note (b) is attended, is the amount shown on sheet No. 2 of this exhibit from January 1, 1912, to August 31st, 1927. The amount for the years 1904 to 1911, to which note (a) is attended represents the total retirements that were charged during that period to the extraordinary expense account which is the same thing

that is now called the depreciation expenditure account, but out of which in 1920 four million dollars was charged to fixed capital. In other words, back of those days, 1904 to 1911, the entire charge for reconstruction, renewals, etc., of track, etc., were charged against the extraordinary expense account, which in turn were charged to profit and loss. In other words there was no depreciation reserve in those days.

(The Chairman) How about the reconstruction of the tracks following the fire?

(The Witness) All were new trackage, etc. Now returning to that (a) item the total charged during that period to extraordinary expense was $6,417,184.59 and in 1920 there was written out of that account and charged to fixed capital $4,015,998.75, leaving net retirements for that period of $2,401,186.00.

Now for the period 1899 to 1903, due to the fire of which you just spoke, it's impracticable to get the actual retirements during that period. So that I took the average retirements between 1904 and 1911 and it figured out something like three hundred thousand dollars a year, as I recall and multiplied that by the number of years to give that figure of retirement, so that I get a total retirements during that entire period since 1899 to August 31st, 1927, of $12,531,603.00.

Now the next column is the balance which would have accrued in the reserve if the 5% had been set up as is now being done and if those retirements had been charged against it. In other words, the difference between the total 5% column of $14,327,565.82 and the $12,531,603.00 results, in a balance which should have been in the reserve of $1,895,963.15. This would have taken care of all retirements, both those that were charged against the reserve proper, those that were charged to profit and loss, and those that are now in suspense, and still would have had a balance remaining of $1,895,000.

Sheet No. 4 is a computation of the result which would have been reached had accruals been made to the depreciation reserve on the same basis as that now claimed by the Company.

In company Ex. No. 24 there is shown a depreciation deduction of $2,200,000. Basing this amount upon the undepreciated cost to reproduce new of the physical property as found in the Commission's valuation, results in a rate of approximately 4%.

In sheet No. 4 of this exhibit this rate has been applied to the actual cost of the property as reflected in People's Counsel Ex. No. 13 in case No. 533, the valuation case. In that case it was shown that the property cost at April 1, 1899, amounted to $32,448,962.00, that's the amount shown in the first column, and that of that amount $8,404,-407.00 represents superseded property, of the horse and cable car periods which was still in the account, leaving a net cost at that date of $24,044,555.00. That is shown in the second column.

From this beginning there has been built up, or I should say from that beginning in People's Counsel No. 13 in the valuation case, there was built up by additions and retirements a cost up to December 31st, 1923, and from that date, I have added in book addtions up to August 31, 1927, so that the average of the period of eight months in 1927 as shown by the last item in the second column of this exhibit amounted to $49,842,589.

By the way, I should have stated that those costs were average fixed capital during the period. In other words, it's the fixed capital at the beginning of the year and end of the year, averaged to make an average for the year.

Q. An average yearly cost? A. An average yearly cost. To these average yearly costs has been applied 4% depreciation, that being the percentage I have already explained as the Company's claim. For instance in the first year, take 1899 4% of $24,044,055, for nine months is $721,000. In the next year four per cent of the $25,167,-000 is $1,006,084 and down the line. 4% has been applied to each of the items in the second column. This would have resulted in a total accrual during that period of $44,-628,233.00. From that total there has been deducted retirements as shown in People's Counsel Ex. No. 42, amounting to $12,531,603, leaving a balance which would have resulted if these accruals had been made on this basis of $32,096,630.

Q. What per cent of property cost would that be? A. This is approximately 64% of the property cost August 31, 1927.

Q. Suppose the rate of 2% had been in the exhibit? A. The result would still have shown approximately $10,000,000 in the reserve over and above retirements.

Now following this out, if the same 4% were carried forward for the next 29 years, as has been shown in this exhibit—

(Mr. Clark) The plant would belong to the public, wouldn't it?

(The Witness) There would be a reserve of some 160% of the property cost which, of course, is a ridiculous situation.

(The Chairman) You haven't carried that forward, tho?

(The Witness) I haven't carried that forward. I think it shows on its face. It shows I think clearly that a 4% compounded rate would be very greatly in excess of the requirements.

(Commissioner Harper) You say that is based on the amount of $2,200,000 claimed by the Company?

(The Witness) Yes, sir, and that has been applied to the property set forth in the Commission's valuation.

Q. That resulted in 4% and that 4% was accepted.

(Commissioner Harper) And that's the percentage you have used here?

(The Witness) Yes, sir.

Q. Mr. Nodder, have you prepared an exhibit entitled "Accident and Damage Account?" A. Yes, sir.

(Mr. Tingley) I ask that be introduced in evidence and marked People's Counsel Ex. No. 43.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Ex. No. 43.

Q. Will you explain that exhibit, Mr. Nodder? A. This exhibit is an analysis of the accident and damage

account since 1921. As explained by the heading of the exhibit the down-totals give the costs of accidents, occurring during the year shown. The additions across as far as the column "total expenditures" show payments actually made during the respective years. I think that's clear. During 1926, for instance, accidents actually applicable to that year, accidents actually occurred in that year amounted to $628,657.44, whereas settlements made during 1926 are carried in the cross total under expenditures of $560,477.15.

For 1927, payments are shown for the nine months ended September 30th, and an estimate was prepared of the 1926 and prior year claims still outstanding at December 31, 1926. They are shown on the next line. This is shown by the exhibit to be in total $139,046.73.

Now in the recapitulation at the bottom of the sheet there is shown for easy reference the costs applicable to the respective years, the expenditures made in the respective years so that a comparison may be made with the provision made, and by provision I mean the charge that was made to operating expenses for accidents and on the converse side put in the accident reserve account. The next column shows the percentage that that provision bore to percentage revenues. I think it's been explained already that the Company's accident reserve is based on a percentage at the present time of 3¼% of passenger revenues. It will be noted that in the six years shown by this exhibit the total charges to operating expenses for accidents amounted to $3,446,927.18, while the actual costs for injuries and damages for accidents occurring during those six years were $3,304,925.32, or an excess charge to operating expenses of $142,000.

The balance in the reserve as of December 31st, 1926, which was $302,160.97 should be adjusted by charges to profit and loss for claims paid during the period covered by this exhibit which were applicable to years prior to 1921, in excess of the balance in the reserve at December 31st, 1920. In other words, the claims paid during the period shown by the exhibit on account of accidents occurring prior to January 1, 1921, amounted to $430,000, whereas the balance in the reserve on December 31, 1920,

was $297,092.56. This would give a revised reserve at December 31, 1926, of $435,660.17.

So that's made up in this way. Take the reserve December 31, 1926, is $302,160.97. Claims for years prior to 1921, which were paid during the years 1921 to 1926, amounted to $133,499.20 in excess of the depreciation reserve at December 31, 1920. Adding those two amounts together would give a revised reserve at December 31, 1926, of $435,660.17.

(Mr. Howard) Don't you ignore, Mr. Nodder, the corresponding items that are not yet settled?

(The Witness) I have included those in the item "Estimated Balance 1926 and Prior Years," Mr. Howard, the next to the last line of the top part of the statement. You will notice in 1926 $108,559.43, the next to the last item on the top part of the statement. Do you get that?

(Mr. Howard) I see that.

(The Witness) At December 31st, 1926, claims were unsettled upon which the Company estimates to pay $294,867.51, so that if the proper corrections had been made——

(Mr. Markell) Where is that?

(The Witness) That's the addition of the amounts paid in the nine months of 1927, which is $155,820, and the estimated balance. In other words, I took the actual payments in 1927 for 1926 claims and prior and added to that the estimated balance at September 30th for those prior year claims. Those two amount to $204,867.51.

So that if the proper corrections had been made to the reserve of which I have already spoken that reserve would be $140,000 in excess of the requirements. Even without making this adjustment the reserve at December 31, 1926, which was $302,160.97, was about $8,000 greater than the estimated outstanding claims at that date. That is including the actual paid for nine months plus the estimate of what is outstanding at December 31, 1926, for 1926 and prior years' claims.

An examination of the recapitulation of this exhibit, as I have already stated, shows that the charges to op-

erating expenses have during the six years shown hereon, been greater than the claims actually paid for the period, so that for the year 1927, it would seem proper to use this excessive accrual of former years to take care of any increased cost this year. So that any estimates for 1927, which include a higher rate of accident costs I think should be eliminated because it has already been taken care of in the past, and it's just as well to balance one against the other.

However, it will be noted that in years 1925 and 1926, provisions made through a charge of 3¼% of passenger revenue charges made to operating expense have been insufficient to meet the costs of claims during those years. In 1926, basing the applicable costs upon the estimate already mentioned, which is shown to be $628,657.44, indicates a deficiency in the charge to operating expenses of about $90,000. In 1925, this deficiency was about $50,000.

Taking all these things into consideration I am of the opinion that in computing an estimate for the year 1928 an additional allowance should be made to operate expenses of $75,000 per year.

This statement of accidents has been further amplified in Sheet No. 2 of this exhibit which is a little statistical statement of the number of accidents and the cost per accident. On the first line is shown the total number of accidents that were paid during the year. I have been unable to make any study of the accidents paid along these lines that were applicable to the year, but the general trend for this purpose I think is all right. These are the accidents actually paid during these particular years. In other words, in 1924 there were 4,162 claims settled; in 1925 there were 4,343 claims settled, and in 1926, 4,374 claims settled. Now the direct cost of these settlements, and by direct cost I mean the settlement was actually made to the claimant, amounted to $353,549.58 in 1924; in 1925 to $393,871.62, and in 1926 to $387,405.62, and to August 31 of 1927, $286,678.94.

The next line shows the direct cost per accident which ranges from $84.95 in 1924 to $99.58 in 1927.

The next item is the cost of accidents which I say is

exclusive of department salaries. In addition to the direct cost of a settlement there are certain costs, such as hospital bills, witness fees and employees' salaries while they are acting as witnesses, etc., which are not specially delegated to any particular accident. They are just kept in total. Adding those to the cost of accidents gives you a cost in 1924 of $416,838.96 or a cost of $100.15 per accident. In 1926 for instance the total cost was $453,368.49 or a cost per accident of $103.65.

The next line is the grand total cost of accidents including department salaries which is the figure shown on the preceding sheet of this exhibit. In 1924 for instance the total cost of accidents were $523,618.82 or $125.81 per accident. In 1926 the amount is $560,477.15 or $128.14 per accident.

I think in view of the fact that in the first place all costs of accidents are gradually increasing, apparently so from these exhibits there is a certain additional allowance which must be made for accidents, but I think taking into consideration the fact that the cost per accident in 1926 decreased somewhat, and the fact that the figures in Sheet No. 1 of this exhibit for 1926 are based somewhat on an estimate, I think that if we struck a line at about $75,000 additional accident reserve allowance it would be giving a mighty fair figure.

(Commissioner Harper) What percentage would that make of operating revenue? Would it be as much as 4%?

(The Witness) No, it wouldn't be 4%. It would be about 3¾.

(The Chairman) It would be more than 3½?

(The Witness) It would be a little more than 3½.

Q. Mr. Nodder, have you prepared an exhibit entitled "Property Appraisal Costs during the Period January 1, 1913, to September 30, 1927"? A. Yes, sir.

(Mr. Tingley) I ask that be introduced in evidence and marked People's Counsel Exhibit No. 44.

NOTE: Statement above referred to is here filed in evidence and marked "People's Counsel Exhibit No. 44."

Q. Will you explain that exhibit, Mr. Nodder? A. This exhibit sets out the cost of property appraisal from the beginning of the valuation proceedings in 1913 to September 30, 1927.

Q. What is the total amount? A. The grand total cost of that valuation has amounted to some $457,000 approximately. The statement is divided into two parts, the upper part being for the valuation which was undertaken as of January 1, 1914. It was never completed by the Commission at that date. The expenses of this former valuation ran up to August, 1919, and were entirely amortized through charges to expenses by the end of 1920.

Q. What's the total figure there? A. The total figure there was $128,614.07. The second part of this statement deals with the current valuation decided by the Commission in 1926 and begins with the formation of the valuation department in August, 1921. It will be noted that this latter part of the exhibit has been divided into two parts beginning with August, 1921, to May 31, 1924, and then from June 1, 1924, to date. There are two reasons for this latter division. The first is the fact that during the years 1921, 1922 and 1923 the charges made for valuation expenses were written off currently. In other words, as they occurred they were charged off to valuation expenses, operating expenses. This feature is also evident in the first five months of 1924 with the slight exception that at that date $37.27 too much had been written off. It was at this time that active work began on the valuation which was recently decided by the Commissison, and from that time charges were made tc the suspense account and have been amortized at the rate of $2,000 per month or $24,000 per year. At the present time the expenses of the Valuation Department, current expenses, salaries, etc., approximate $1,100 per month, so that there is being written out of the expenses of valuation already included approximately $900 per month or $10,800 per year in addition to charges for the Valuation Department proper.

Now Sheets 2, 3 and 4 of this exhibit are detailed expenditures of the amounts charged against the suspense account from June 1, 1924, to September 30, 1927, which

is the latter part of the first sheet. Sheet No. 2 is from June 1, 1924, to December 31, 1924. Sheet 3 are expenditures from the year 1925, and Sheet No. 4 separately for 1926 and the nine months of 1927.

In 1924 for instance the total expenditures, by that I mean from June 1, 1924, to December 31 as shown by Sheet No. 2, the total expenditures were $85,284.09. In 1925 these expenditures amounted to $147,821.27. In 1926 they amounted to $26,147.26, and in 1927 for nine months to $14,606.95. At the rate of $1,100 per month now being charged to valuation department expenses at the end of this year they will have amounted in total to $453,000.

This exhibit has been submitted so the Commission may decide a proper amount to be allowed to the Company as a deduction from operating expenses. It is recommended that the charges in the first half of this statement, that is from 1913 to 1920, be allowed as a proper expenditure of the years in which they were actually written off. In other words, consider those as items over the dam. And the same things I would suggest for the years 1920 to 1924. But inasmuch as they were practically written off to May 31, 1924, that they be considered as gone.

Beginning with the period June 1, 1924, I would recommend that, the amount by the way will have amounted to $325,000 at the end of the month of this last period June 1, 1924, to December 31, 1927, and I would suggest that they be divided equally, half to be borne by the car rider through charges to operating expenses, and the other half being borne by the stockholders by charges to profit and loss. This will result in approximately $162,500 being borne by the car rider. If amortization accruals at the rate of $2,000 per month be continued during the remaining month of this year the total amount amortized will then be $132,524.39, leaving a balance of approximately $30,000 to be amortized. It is suggested that this amount be spread over the following five years which will give a monthly accrual of $500 per month. This amount added to the current cost of maintaining the valuation department which I have already stated

to be approximately $1,100 a month will give $1,600 a month charge or $19,200 per annum in place of the present $24,000 per annum, and of course I suppose it is to be expected that with the completion of the valuation the valuation department expenses will shortly cease.

(Mr. Clark) Do you know whether that is so or not?

(The Witness) I do not.

(Commissioner Harper) What are the duties of the valuation department now that the valuation has been completed?

(The Witness) The recent duties in part have been computation of information for the preparation of this case, for instance, to bring the valuation to date in this case.

(Mr. Clark) Isn't that done in the regular reports to the Commission every month or every quarter?

(The Witness) No reports are made of that particular nature that I know of.

(Mr. Clark) They report all retirements and all net additions to capital, don't they?

(The Witness) They send in an annual report.

(Mr. Clark) Don't they include that in their monthly report?

(The Witness) No, sir.

(Mr. Clark) Quarterly reports either?

(The Witness) No, sir. Operations only.

(Mr. Clark) Is that the only purpose that you think would justify the continuation of the valuation department?

(The Witness) That's all that I can think of, the continuing of the valuation and keeping it up to date.

Q. Mr. Nodder, have you prepared an exhibit entitled "Estimated Revenue Lost Through the Issuance of Free Tickets to Employees and Park Concessionaires During 1926"? A. Yes, sir.

(Mr. Tingley) I ask that be introduced in evidence and marked People's Counsel Exhibit No. 45.

NOTE: Statement above referred to is here filed in evidence and marked "People's Counsel Exhibit No. 45."

Q. Will you explain that exhibit to the Commission? A. This statement is an estimate of the revenue lost to the United through the issuance to its employees and to Park Concessionaires and their employees of free tickets. It's a revision of the exhibit I put in in the original hearing in this case. The figures are based on the tickets issued during 1926, but it is estimated that approximately——

(Mr. Markell) What was the number of your old exhibit on the same subject?

(The Witness) No. 15. (Continuing) The same results will be shown for any succeeding year. The statement is based upon the tickets actually issued during that year which amounted to $5,674,893 as shown by the third column of figures. No records were available to show the number of tickets actually used in the various classifications shown on this statement. We do know however that the total number of free tickets used in transportation amounted to 4,876,952, and by taking the proportion that the one bears to the other, which is in this case 85.94%, and applying that proportion to the total number of tickets in the individual items we arrive at the amount shown under the column "Revision on Account of Unused Tickets." For instance 85.94% of the first item, 645,100 gives you the figure of $554,399. This column has been multiplied by 7½c on the theory that the employees or the park concessionaires would purchase tokens, and this gives a total figure of $294,320.40. Carrying out the first item as an example, 554,399 tickets taken from coupon pass books amounted to $41,579.93. The total of the items in the last column gives the figure I have just stated.

The next line I have allowed for transfer privileges, $122,427.39. This has been done because transfers are not allowed on the free tickets, and I have used the same percentage in this study that has been experienced in

1926 of ordinary revenue passengers. In other words, transfer passengers represented 41.6% of the total revenue passengers, so that by applying the same 41.6% to my figure of $294,320.40 gives me $122,427.39. After deducting this figure from the total allowance gives an estimated annual loss of $171,883.11.

Q. That was the figure used by Mr. Wolf in his study on the effect of the 1c transfer charge? A. That is correct.

Q. Any further comment on that exhibit Mr. Nodder? A. I have this comment to make, that if any change is made in the present rate of fare by so much will this amount of $171,000 be increased, the proportion that that increased fare bears to the 7½ cent token fare used in this exhibit, so that figure would be greater if any change in the revenue should result.

Q. Mr. Nodder have you prepared an exhibit entitled "Additions to and Retirements from Valuation"? A. Yes, sir.

(Mr. Tingley) I ask that be introduced in evidence and marked People's Counsel Exhibit No. 46.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Exhibit No. 46.

(Mr. Markell) Have you another copy?

(Mr. Tingley) We haven't any more copies.

(The Chairman) This was the one that we decided we wouldn't go to the expense of having this whole thing photostated. It looks very much more formidable than it is. I think after Mr. Nodder explains it you will find that you won't need so many copies.

Q. Will you explain that to the Commission, Mr. Nodder? A. The exhibit is entitled "Valuation as of December 31, 1923, with Additions Thereto and Retirements Therefrom by Years, During the Period January 1, 1924, to August 31, 1927." This exhibit has been prepared to bring the Commission's valuation as of December 31, 1923, up to date, and it might be well to state that in this exhibit no amount has been included on ac-

count of easements on the basis that the Commission has not yet made any decision on it, and any amount that the Commission does accept may in lump total be added to this figure.

The first sheet is a grand summary of the entire thirty-three sheets, beginning with the valuation of $70,000,000 made by the Commission and shows additions thereto and retirements therefrom for each of the years 1924, 1925, 1926 and the eight months to August 31st, 1927. The first item on the sheet is the Commission's valuation of $70,000,000 as of January 1, 1924, and there has been deducted from this an amount for grants in aid of construction which was the ledger balance in that account as of December 31, 1923.

Q. What was the amount of that, Mr. Nodder? A. The amount of that was $90,259.45.

Q. What did that consist of? A. Consisted of grants which had been given principally by the City of Baltimore in assistance in building construction, etc.

This left a net valuation as of January 1, 1924, of $69,-909,740.55, and that's the starting point of the exhibit.

To this amount has been added additions to fixed capital consisting of three items, first opposite the line "Additions to Fixed Capital" the regular increase in fixed capital, second the item "Articulating and Permanently Coupling Cars" which is at present carried in suspense, and third "Improvements Made on Property Leased by the United From the Maryland Electric Railways Company." The first of these items, which is shown on the exhibit to be $1,445,705.52, should be explained a little further. The total additions to fixed capital of $1,582,-265.38 which is shown in the short column is brought from sheet No. 2 and that I will explain a little later.

(Mr. Clark) Now are they the net additions?

(The Witness) That's total additions for the year 1924.

(Mr. Clark) All right.

(The Witness) From this amount has been deducted

the cost of removal of retired property, $136,559.86. The asterisk referring to the note at the bottom of the page states that this represents 20 per cent. of the cost of track reconstruction and renewal.

Now in connection with the depreciation exhibit I explained that when the Company was making reconstruction or renewal of tracks and overheads the practice was to charge the entire cost of the job to the depreciation accounts and compute therefrom an amount which would represent the original cost of the work retired. This computation is based on the factor of increase in cost of labor and material occurring between the time that the original work was done and the present time, or when a renewal or reconstruction is made. Now the total of that job included both the tearing out of the old tracks, special work, etc., prior to the putting in of the new work, so that there is a certain cost which is not a charge to fixed capital on a new job. In other words, the amount shown in this exhibit, and it is the amount that is shown on the company's books for additions amounting to $1,582,265.38 includes a certain amount for labor expended in tearing out old structures, trackage or special work as the case may be. It is impracticable, if not impossible, to ascertain the exact cost of such work when the tearing out and the building up are done at the same time. To arrive at this figure therefore a study of a number of representative jobs was made, and this study disclosed that the total cost of labor in those jobs aggregated approximately 44% of the total cost of the job. In consultation with the Commission's engineering staff, and I think it is self-evident that such is the fact, it has been determined that approximately 50% of that labor represented costs applicable to the tearing out of the old work and that 50% represented new construction. In other words, fifty-fifty on the tearing out and putting back.

Now I already stated that the labor costs of that study aggregated something like 44% of the total cost of the work. Applying the 50% labor to the 44% will give 22% of the total cost of the work as the cost of tearing down the old work. For the purposes of this exhibit I have just used a straight 20 per cent., and this 20%

has been applied to the amount of track reconstruction work which is shown on sheet No. 8 for 1924 and which amounted in 1924 to $682,799.31. Twenty per cent. of that gives the amount of $136,559.86 for the year 1924 shown in the short column under 1924 of this first sheet.

The item of Improvements to Leased Property of the Maryland Electric Railways Company shown under the additions amounting to $29,491.81 is shown in detail on sheet No. 32 of the exhibit.

That's the next to the last one. It is shown there by years for the years 1924 and 1925 and on sheet No. 33 for 1926 and the eight months of 1927.

Adding these three items together gives the amount that is shown for total additions of $1,500,868.60. Now from this figure there have been deducted retirements at valuation prices. This figure in 1924 amounted to $828,376 and has been brought forward from sheet No. 2 where it will be explained shortly. The next line which includes grants in aid of construction is blank for 1924, 1925 and 1926, but there is an amount shown for 1927 of $28,211.65. That amount covered the proportionate cost of the City of Baltimore in connection with the removal, as I recall it, of the Edmondson Avenue tracks. That was the proportion that the City bore to the cost of that work. The next line is Total Deductions which in 1924, 1925 and 1926 amount to the same as the retirements. In 1927 that amounted to $1,288,011.65. The difference between the Total Additions and the Total Deductions gives a net increase for the year which in 1924 was $672,492.60. In 1925 this amounted to $292,854.25. In 1926 it was a decrease of $230,751.52, and in 1927 a decrease of $560,120.64. Now this net increase for the year has been added to the amount shown in the third line down, Valuation at Beginning of Year to make a total at the end of the year, and the two then have been averaged to give an average for the year which is the last line on the statement. 1924 this average for instance was $70,245,986.85. The similar figures have been shown for 1925 and 1926 and 1927 as I have explained for 1924. I don't think any further explanations of those is necessary if I just deal with 1924.

It might be well to draw the Commission's attention to the last item in the last column of the sheet in which it is shown that the total at August 31, 1927, the end of the period covered by this exhibit, amounted to $70,084,215.24. That is without easements.

(Mr. Toole) In getting that, in that have you considered the depreciation?

(The Witness) I have not.

(Mr. Toole) The general depreciation?

(The Witness) I have not considered any depreciation in this exhibit.

(Mr. Toole) When do you do that? What I mean is what I have said once before, maybe I don't know what I am talking about, but if so I want to find that out so it won't happen again. If you take an automobile to New York or to Boston and come back again you break a wheel, you replace that broken wheel. Now that automobile isn't worth as much as it was before, is that right?

(The Witness) That's correct.

(Mr. Toole) Now if you run one of these railway cars over track and nothing is replaced is the value of that railway car and that track and that trolley wire, is that worth what it was before?

(The Witness) That's perhaps a question, as far as the value is concerned, that I am not capable of answering, but I will answer it this way. I have heard a good many arguments before commissions from railways, particularly steam railroads, that no depreciation existed in a property; that a property that is kept in 100% operating condition is 100% good. Now with this property right here, as I say, I am not qualified to state from a typical standpoint whether any depreciation has actually occurred, but while the property since December 31, 1923, has depreciated it is also a fact that a certain amount of that property has been replaced with new stuff, so that on the average it might be that the property is now as valuable as it was on December 31, 1923.

(Mr. Toole) But why would a different rule apply to a railway car than to an automobile? Don't the automobile tax lower as years go by?

(The Witness) Absolutely, but if you have three automobiles, one is one year old, one is two years old, and one is three years old, and you take the average depreciation of those three automobiles, and at the end of the third year this one is scrapped and a new one comes in then your average will perhaps be the same that you had at the beginning of the three years. Now if you only had one automobile then your statement would be correct.

(Mr. Toole) Yes, but we don't see anything here where these things have been replaced. There is no evidence of that. The cars are used, the tracks are used, the trolley wires are used. Now if you are going to count it as 100% today, tomorrow it breaks.

(The Witness) There are something like 20 miles or so of track each years which is renewed, absolutely rebuilt.

(Mr. Toole) Let me put it another way and then I won't worry you any more. Suppose now when the Commission made that first valuation in 1923 they took into consideration the value or rather the length of time all of this stuff had been used, didn't they?

(The Witness) I believe so. In some of the exhibits it is spoken of as average ages.

(Mr. Toole) If it's been in use fifteen years it wouldn't be worth as much as if it had been used one year, and the valuation was made accordingly, isn't that true?

(The Witness) That's correct.

(Mr. Toole) Suppose a valuation would be made now, on the first of January, 1928, wouldn't that same rule be applied?

(The Witness) Absolutely.

(Mr. Toole) If that wasn't done wouldn't the Commission then find that a whole lot of the property isn't worth as much as it is in 1923?

(The Witness) That's a fact.

(Mr. Toole) Then the valuation of the plant really decreases year by year?

(The Witness) The valuation of the plant that is put in at a certain time does decrease, but there is a certain amount, as I say I am not qualified from a physical to say just what that is, there is a certain amount that is covered on the average by the addition of new plant, so that the average is perhaps the same. Now as I say I am not qualified to state whether it is.

(Mr. Toole) Well, I don't see why the same rule wouldn't apply if you take an automobile even if you owned a thousand automobiles, if you keep breaking the wheels.

(Mr. Tingley) But you are buying new ones all the time.

(Mr. Toole) But they don't always buy new cars, and when they do that's added to capital. The reason I asked you about this a lady said, whom I met back in the rear end of the hall, that this was a thing that ought to be pushed to the limit, and that I was very clever in pushing this, and if I am getting any roses throwed at me like that I want to get them all, and I want to find out just what's what. The ladies think that that ought to be taken notice of and the value of the plant be reduced accordingly.

(The Witness) I don't know. I suggest that the ladies make quite a study of that and I think they will be allowed to come up here and testify to the value of that property right now as compared to what it was in 1923.

(Mr. Clark) If you take the undepreciated value which the Commission put on this property as of December 31, 1923, in order to bring that valuation up to date at any time, now, next year, or 1930 or 1935, wouldn't you take the undepreciated value which the Commission found December 31, 1923, add net additions, then take that total undepreciated and apply the 85% condition to the whole in order to get the value as of the particular time on the theory that after so many cycles we assume that the condition of that property is always 85%?

(The Witness) If you were to assume that 85% were always the cycle.

(Mr. Clark) Isn't that always a fair assumption; that 85% condition is a normal condition for a normally maintained railway to be?

(The Witness) I wouldn't want to say that.

(Mr. Clark) Wasn't it contended that the United was well maintained in 1924?

(The Witness) Yes, sir, but there is a difference of five or six per cent. between the claim of the company for value of the property and the allowance by the Commission, the per cent. condition.

(Mr. Clark) Yes, there is a difference of opinion as to the condition, but isn't it so that when this Commission found that the condition of this here maintained electric railway property was 85% that that is the percentage which this Commission would apply to a well maintained electric railway now or 1930 or 1935?

(The Witness) I would say that that is correct provided that the Company did maintain its property in about the same condition that the Commission found then.

(Mr. Clark) I am assuming that and I am assuming that to be reasonable therefore to get the valuation as of today, 1927, wouldn't you first get the undepreciated value by taking the Commission's undepreciated value in 1923, putting the net additions to get the undepreciated value today, and then apply the 85% condition to get it today?

(The Witness) It would perhaps be a good principle.

Q. Now suppose you complete your comment on this exhibit, Mr. Nodder? A. Now sheets 2 to 11 of this exhibit are detailed statements for the year 1924. I am not going to say anything about them except as to sheet 2 which is a summary of those sheets 2 to 11. The balance of the sheets follow in similar groups. Sheets 12 to 18 cover 1925. Sheets 19 to 24 cover the year 1926, and sheets 25 to 31 cover the eight months of 1927, and

each of these groups of sheets is preceded by a summary which in the case of 1924 is sheet No. 2, 1925 is sheet No. 12 and so on. Those summaries are identical in form so that if I explain 1924 I think the same explanation will be sufficient for all of the other years without going into any further detail.

Now this statement is divided into two sections, first additions and secondly retirements. The first column is book figures and has been put in there so as to tie up these statements with the balance sheets which I will speak of later.

The next column "In Valuation" represents items that have been added to the books during the year 1924 which were included in the Commission's valuation, or in the case of those Maryland Electric cars they have just been transferred from one company to the other without any net addition in fixed capital, and the last column shows "Not in Valuation," that column shows net additions during the year, and that is the figure $1,582,265.38 which has been carried forward on the first sheet of the exhibit.

Now under Retirements I have already explained the book figures, the column "Valuation Figures" represents the retirements at valuation prices. This figure, there is an historical note attached to it, is made up in the following way. On sheet No. 11 of this exhibit you will find a statement of retirements of fixed capital at depreciated valuation amounts for the years 1924, 1925 and 1926. This sheet is shown by accounts. Under 1924 you will find the first part of that 1924 retirements as shown in Company's Exhibit No. 23. That's the figure that Mr. Bancroft Hill put in as retirements during 1924. The total of that column amounted to $802,771.00. Against this has been applied the per cent. condition allowed in the Commission's valuation. In the case of tracks for instance 80%, 80% has been applied to Mr. Hill's figure to arrive at a depreciated value of $448,880. That depreciated value is the amount at which that particular group of tracks retired were included in the valuation in the $70,000,000 figure. The same thing for paving. The amount shown by Mr. Hill is $158,000. Ap-

plying a per cent. condition of 80 gives a depreciated value of $126,400.

The same thing applies to all the other accounts so that the total for the year, depreciated value, amounts to $649,358. On sheet No. 2 this figure has been brought forward and to it has been added the overheads in the valuation, which amounted to 22.3 per cent. of the cost to reproduce new. This amounted to $179,018, making total retirements depreciated with overheads of $828,376. These overheads have been taken out for the simple reason that they are included in the $70,000,000 in the first place, and secondly additions have been made in this exhibit including the overheads as actually now charged by the Company. No deduction has been made from the present additions for overheads which are currently being charged.

(Mr. Clark) What do you mean by overheads currently being charged?

(The Witness) As the Company makes fixed capital additions it charges a certain percentage to cover superintendence, engineering, general overheads, etc., into fixed capital.

(Mr. Clark) That's supposed to represent actual expenditures?

(The Witness) It represents actual expenditures.

(Mr. Clark) Then they are construction overheads you are speaking of?

(The Witness) They are construction overheads. Now sheets Nos. 3 to 10 are details upon which sheet No. 2 has been built. For instance the first item of sheet No. 2, Engineering Department, is shown in detail on sheets 3 and 4 amounting to $82,861.92. The next item of Franchise Charges $8,028 is shown on sheet No. 5. The next item of Paving Charges $4,054.11 and so on down the line, track reconstruction is shown on sheet No. 8 amounting in this case to $682,799.31. These items have all been explained in sheets 3 to 11.

The following years 1925 and 1926 as I said before are made up exactly the same way that 1924 is made up.

The summaries for those years are shown on pages 12, 19 and 25, the latter for the year 1927.

In the preparation of this exhibit no attempt has been made to adjust the valuation as of December 31, 1923, to take into consideration any decreased costs of street railway construction since 1923 nor any depreciation occurring in the property since the valuation date. I think Mr. Wolf has already spoken very effectively on the first of these items, the matter of reduction in street railway construction. No consideration has either been given to mileage which has been abandoned due to the rerouting program but which has not yet been written out of the Company's books. In other words these figures as far as additions are concerned are based purely on book figures, and as far as retirements are concerned are based on Mr. Bancroft Hill's statements which did not include abandoned trackage which had not actually been taken up. That's my understanding of it.

(Mr. Clark) I would like to make a statement that I should have made this morning and for which I apologize. Mr. Sobeloff asked me this morning if I wouldn't explain to the Commission that he was actively engaged in a civil case and he would be unable to attend.

(Examination suspended.)

NOTE: At 4:00 o'clock P. M. the Commission then adjourned until Tuesday, November 22nd, 1927, at 10:00 o'clock A. M.

TWELFTH DAY.

Thereupon—

CHARLES NODDER,

a witness of lawful age, produced on behalf of the Public Service Commission, having heretofore been duly sworn, according to law, and whose examination was suspended for the purpose of adjournment, resumed the stand, was examined and testified as follows:

DIRECT EXAMINATION (Continued).

By Mr. Tingley:

Q. Mr. Nodder, have you prepared an exhibit entitled "Net Return average rate base and percentage of rate of return for the years 1924 to 1926, inclusive"? A. Yes, sir.

(Mr. Tingley) I ask that be introduced in evidence and be marked People's Counsel Exhibit No. 47.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Exhibit No. 47.

Q. Will you explain that exhibit to the Commission, Mr. Nodder? A. This exhibit shows the net return on its investment received by the United during the years 1924 to 1925 and 1926.

(The Chairman) You mean on its value?

(The Witness) On its investment. That is its valuation. The first line of the statement is the amount shown in Company's Exhibit No. 16 and to this has been added two items which were deducted erroneously, on that company's exhibit.

The first item, interest on Bethlehem Steel Company's construction, is the amount paid by the Company for the use of the tracks at Sparrows Point, owned by the Bethlehem Steel Company. The amount is charged thru our account No. 217, miscellaneous rents, as provided by the Commission's classification and as such is not consid-

ered a proper deduction in computing the amount of income included in the so-called return.

The second item represents commissions paid to fiscal agents for their services in paying those coupons. This amount is chargeable according to the Commission's classification to account No. 225, miscellaneous debits. And that is another account that is not considered a proper deduction in arriving at the return.

From this exhibit it will be noticed that the corrected return received by the United during those three years amounted to $4,136,578.38 in 1924; $4,291,051.39 in 1925; and $4,326,183.91 in 1926.

There is shown on the next line the average rate base without easements as shown on Exhibit No. 46, the large one which I explained yesterday afternoon.

The next line shows the rate of return on that base, that is without easements for the three years, which amounted in 1924 to 5.89; 1925 to 6.07, and in 1926 to 6.11. The rate of the return on a total valuation of 75 million dollars, which basis was explained by Mr. Wolf yesterday amounted in those years to 5.52 in 1924; 5.72 in 1925, and 5.77 in 1926.

Q. Have you prepared an exhibit entitled "Investment in Road and Equipment by Accounts"? A. Yes, sir.

(Mr. Tingley) I ask that be introduced in evidence and marked People's Counsel Ex. No. 48.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Ex. No. 48.

Q. Will you explain that to the Commission, Mr. Nodder? A. This exhibit has been prepared purely as an accounting exhibit to show the Commission the condition of the Company's fixed capital as shown by its books as of August 31, 1927.

The statement has been built up by accounts since June 30, 1914. The investments as of June 30, 1914, is given in one item, the first item on the sheet, it being impracticable to separate this amount by accounts on account of the consolidation of 1899 when all of its accounts

were put together in one lump sum without any respect to the particular accounts, also to the fact that prior to Commission classification there was no set form of keeping fixed capital by accounts.

The exhibit therefore by accounts has started with December 31, 1923. That is, the investment as of December 31, 1923, by accounts, and since that date additions have been made for the two companies, United Railways and Electric Company and Maryland Electric Railways Company for 1924, 1925, 1926, and the amount for the eight months ended August 31st, 1927.

In the last column are shown the details for the investment by the two companies to August 31, 1927.

It will be noted that the grand total investment in road and equipment, shown by the Company's books on August 31, 1927, is the figure in the bottom right hand corner, $90,575,521.66.

Q. Mr. Nodder, just to make that exhibit clear, that last total figure which you read is higher than the amount of the valuation brought up to date, isn't it? A. Very much so.

Q. And is very much higher than the amount of the valuation at the time of the valuation? A. Yes, sir.

Q. Have you prepared an exhibit entitled "Average rate of interest on indebtedness at September 30, 1927"? A. Yes, sir.

(Mr. Tingley) I ask that be introduced in evidence and marked People's Counsel Ex. No. 49.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Ex. No. 49.

Q. Will you comment on that exhibit, Mr. Nodder? A. This next series of three exhibits is intended to show that a six per cent. rate of return is ample for this Company in view of the rate it is now paying on its borrowed money.

This statement, Exhibit No. 49, shows the indebtedness of the United and of Maryland Electric Railways Company as of Sept. 30, 1927, and covers both bonds,

mortgages and short term notes, the latter amounting to $1,900,000 at interest rates ranging from four and a half to five per cent. and averaging four and three-quarter per cent. as is shown on my next exhibit that I will speak of in a moment.

The first column of this exhibit shows the par amount of the securities or notes actually outstanding at September 30. The next column the interest rate and the last column the actual interest on the particular securities for one year. From this it will be noted that the average interest rate being paid is 4.6783%, slightly less than four and three-quarter per cent.

The attention of the Commission is directed to the fact that the total indebtedness as shown by the exhibit as of September 30th, was $69,076,200, or slightly less than the Commission's valuation plus additions and retirements as shown by People's Counsel Ex. No. 46.

To allow an eight per cent. return on this valuation would be equivalent to practically allowing a three and half per cent. profit. That is the difference between 4.678 and 8% on the entire property, in which the stock has an equity of about a million dollars plus the Commission's allowance for easements that may be decided later. On the one million dollars this would amount to a two hundred and forty-five per cent. earning, and with a five million dollar valuation of easements would amount to over forty per cent. of earnings.

(Mr. Clark) So that notwithstanding the fact, Mr. Nodder, that exclusive of easements, according to the Commission's valuation a valuation of only about one million dollars is given to the 20 million of common stock and the Cmpany has paid three quarter dividends this year, hasn't it?

(The Witness) That's right.

(Mr. Clark) And notwithstanding a reported deficit?

(The Witness) Not a deficit, the Company has reported no deficit.

(Mr. Clark) A deficit under dividend requirements?

(The Witness) A deficit under dividend requirements, yes, sir.

Q. Mr. Nodder, have you prepared an exhibit entitled "Statement of notes outstanding September 30, 1927"? A. I have.

(Mr. Tingley) I ask that be introduced in evidence and marked People's Counsel Ex. No. 50.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Ex. No. 50.

Q. Will you explain that exhibit to the Commission, Mr. Nodder? A. This statement is in support of the previous statement I just put in and shows the short term notes outstanding at September 30, 1927. It shows to whom payable, the due dates, and the rates of interest and the amount of principal. I have already stated that the rates of interest, shown in this statement, range from four and a half to five per cent. with a weighted average of four and three-quarter per cent., on the total amount outstanding of $1,900,000.

It might be of interest to the Commission to know that during July when it is claimed that passenger revenues were falling so rapidly to the impairment of the Company's credit as stated very definitely in the Company's brief, the Company was still able to borrow at the rate of four and a half per cent. as against four and three-quarter per cent. in the previous years.

Q. Have you prepared an exhibit entitled "Average weighted interest rate of securities authorized to be issued by the Public Service Commission of Maryland from January 1, 1921, to December 31st, 1926"? A. Yes, sir.

(Mr. Tingley) I ask that be introduced in evidence and marked People's Counsel Exhibit No. 51.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Exhibit No. 51.

Q. Will you comment on that exhibit, Mr. Nodder? A. This exhibit is a weighted average of the interest rates on securities which have been authorized by this Com-

mission since January 1, 1921, to December 31, 1926. It takes in all the companies that have been authorized to issue securities by this Commission.

(Mr. Clark) By securities, you don't include stock, do you?

(The Witness) No, because it is more or less impracticable to get the rate of earnings on stocks.

The significance of the exhibit is the fact that the average interest rate of the securities issued by Maryland Public Utilities has shown a decided tho gradual decrease from 6.33% to 5.12% in 1926, and makes it evident that utilities at the present time are able to borrow money at considerably less rates of interest than was possible in prior years.

Q. The immediate years prior to 1921, the immediate post-war years, showed materially higher rates, didn't they, Mr. Nodder? A. For the companies I examined, yes.

Q. And there has been a steady decline from 1921 to 1926 in the average interest rates on the securities authorized by the Commission? A. Yes, sir.

(The Chairman) That's for all the companies?

(The Witness) Yes, sir.

(Mr. Howard) Is that the rate on par?

(The Witness) That's the interest rate on par. I might say in preparing this study here I didn't take into consideration the rate at which they sold for the simple reason it was very hard to get all these selling prices. I did notice in general around the early periods of this exhibit, the Commission was allowing securities to be sold at 85 and 90, whereas now there are very few securities going out that the Commission allows to be sold at less than 95. Practically all of them are par; some of them around 97½.

Q. So that had the market figure been used instead of the face figure, the result of the exhibit would have been still more striking, and would have been the same in effect? A. Yes, sir, had the same effect and been more

striking in the reduction of the interest rates now being paid.

Q. Mr. Nodder, have you prepared some balance sheets of the Company? A. Yes, sir.

(Mr. Tingley) I ask that they be introduced in evidence and marked People's Counsel Exhibit No. 52.

NOTE: Balance sheets above referred to are here filed in evidence and marked People's Counsel Exhibit No. 52.

Q. Will you make any comment that you want on this exhibit, Mr. Nodder? A. This exhibit consisting of four sheets, is the regular accounting exhibit consisting of the balance sheets of the Company for the years 1923, 1924, 1925, 1926 and to August 31, 1927.

Sheet No. 1 is a consolidated balance sheet of the Maryland Electric and United Railways Company and several subsidiary companies that I will speak of in just a moment.

Sheet No. 2 is a balance sheet for the same periods as the first one for the United Railways Company alone.

Sheet No. 3 is comparative balance sheets for the Maryland Electric Railways Company covering the same periods.

Sheet No. 4 is a supported statement to Sheet No. 3 and is occasioned by the fact that the Baltimore, Sparrows Point and Chesapeake Railway Company and the Baltimore, Halethorpe and Elkridge Railway Company, which is spoken of on Sheet No. 4, are not consolidated with the Maryland Electric until sometime in 1924, so to make a comparative statement I have consolidated those three companies, the Maryland Electric, the Baltimore and Sparrows Point and Baltimore and Halethorpe, to make one consolidated total as of December 1, 1926.

As I say, during 1924 they were consolidated, so that the balance of these figures covers all of the companies.

(The Chairman) On this small sheet?

(The Witness) Yes, sir, on this small Sheet No. 4.

(Mr. Tingley) Mr. Nodder is with you for cross-examination, Mr. Howard.

(Mr. Howard) We better follow in order and have cross-examination of Mr. Wolf first.

(Mr. Clark) What's the name of that consolidated company?

(The Witness) Maryland Electric Railways Company.

(Mr. Clark) They were just merged into that company?

(The Witness) They were just merged into the Maryland Electric Railways Company.

(Examination suspended.)

Thereupon—

H. CARL WOLF,

a witness produced on behalf of the Public Service Commission of Maryland, having heretofore been duly sworn, according to law, and whose examination was suspended for the purpose of hearing another witness, resumed the stand, was examined and testified as follows:

CROSS-EXAMINATION (Continued).

By Mr. Howard:

Q. Mr. Wolf, at the beginning of your testimony yesterday, you defined the terms you were going to use, and one of those terms that you defined was the definition of when a rate was burdensome and I understood you to define it that you were going to use that term to mean whenever a rate caused any diminution in travel, then under your definition you called it burdensome. I just want to get the meaning of the terms clear? A. That was one of the tests of burdensome, yes.

Q. I understood you to define burdensomeness in the sense you were going to use it as meaning, as you said, whenever a rate was such as to cause a reduction in the passengers that then it was burdensome? A. It indicated burdensomeness, that's right.

Q. So according to your definition if passengers were permitted to travel free, and then a one cent fare was introduced that undoubtedly cause a diminution in the travel, wouldn't it? A. I would think so.

Q. And that would be within your definition of a burdensome fare? A. It would become burdensome to those people who refused to ride.

Q. I only want to get the meaning of the term, of course? A. That's right.

Q. Now you have your exhibits, Mr. Wolf? A. Yes, sir.

Q. The first exhibit that you filed was one undertaking to show by illustrations the effect of fare variations on revenue passengers and for that purpose you have some ten companies selected? A. That's right. Those are the companies selected by the American Electric Railway Association's statistical department.

(The Chairman) That's Exhibit No. 19?

(The Witness) Yes.

Q. You took them from that bulletin? A. Yes.

Q. Now wasn't that period in general one of rising fares? A. There were both increases and decreases in this table.

Q. When you count them haven't you got only 8 decreases as against a very much larger incerase there? A. I think so, yes, there were more increases than decreases.

Q. And everyone knows that's been a period in which as a whole there has been increases rather than decreases, isn't that true? A. This covered the war period. Yes, that's true. In those towns there were more increases than decreases.

Q. And hasn't it also been on the whole a period in which the travellers on street railways have not been increasing as before, but rather falling off? A. No, I thing that isn't true. It's been going both ways on these properties.

Q. Now let's see some of the illustrations that you have here. Take for instance the Twin City Rapid Transit Company. They had a fare of six cents and they introduced an eight cent base with ten tokens for 60 cents. The token rate is the same as before, isn't it? A. That's right.

Q. Do you think that a falling off of over 10 per cent. in passengers could have had any connection with changing from a flat rate of six cents to a token rate of six cents? A. Oh, I think it had some connection, yes.

Q. But you don't believe for a moment that it could have caused a falling off like that, could you? A. I am not prepared to say one way or the other.

Q. And you are not prepared to say that it didn't? A. Not one way or the other.

Q. Now turn to the Dallas Railway and Terminal Company. There you have a falling off of 4.6%, as the last item in this part. That was a change from a six cent flat fare to five tokens for 30 cents. Five tokens for 30 cents is at the six cent rate, isn't it? A. That's right, but the cash fare was increased to seven cents, and in those cities I think the increase in the cash fare with a retention of the same token fare would undoubtedly have an effect on the average fare paid and hence on the riding.

Q. Take up the next one, and the Androscoggin and Kennebeck. By the way, is that an interurban road? A. Yes, with town operation. I am not sure that this includes the whole operation or just the town operation. It does run between cities or towns.

Q. Now when you see, as the last item thereon shows, going from a nine cent base with six tokens for fifty cents, to ten cents a drop of nearly 20%, you are not prepared to say that that was the result of that increase from a nine cent base and a token allowance to ten cents, are you? A. No, but on the other hand, I am not prepared to say that it isn't. I think the increase to the ten cent fare undoubtedly played a very important part in that large drop.

Q. Let's take the next one, the Birmingham Light and Power Company. They had a flat fare of seven cents, didn't they? A. At one time, yes.

Q. And they changed that to an eight cent base, with 15 tokens one dollar? A. That's right.

Q. Fifteen tokens for one dollar made it less than a seven cent rate? A. Less.

Q. So there was a change from a seven cent cash fare to an eight cent one, accompanied with a token rate that was cheaper than the seven cent rate? A. That's right, but the average fare was still increased.

Q. It must have been very slightly, wasn't it? A. I can't recall at this time.

Q. At any rate a man who chose to buy tokens rode cheaper? A. Well, the man who could afford to put a dollar into fifteen tokens, yes. Ordinarily I think you will find over the country that that's not so often done as is illustrated in these weekly passes, when they charge too high a price for them.

Q. Now the loss in passengers that you note there is nearly 25%? A. That's right.

Q. By the way, you say there was a raise in the average rate, do you know what the average rate under the two methods was? A. No, I can't give you that figure now, Mr. Howard.

Q. It must have been very insignificant, wasn't it, if at all? A. I can't give the figures.

Q. You think there was? A. I am sure there was an increase in the average fare.

Q. But the particular change was that anybody who bought tokens was riding cheaper than those who travelled before? A. Yes, anybody who wanted to spend a dollar.

Q. He could travel cheaper than he did before? A. Yes. I doubt if there were very many people did that. In fact, I think your Company at one time objected to that very thing, to putting a token rate on a dollar basis, or

something of that kind, on account of the fact that few people would take advantage of it except the wholesalers who could actually afford to put the money into it. In other words, the small rider didn't benefit by it.

Q. You mean to say that the traffic there fell off nearly 25% or one-fourth because of such a change as that? A. I say that the traffic fell off almost 25% when the fare change was made, and I think that the fare change had a very important bearing on the falling off in traffic.

Q. Such a falling off as 25% on such a fare change as that? A. Take the next point, Mr. Howard, where the fare was decreased materially from eight cents cash to seven cents cash, and from a token fare of six and two-thirds cents to a token fare of six cents and there was an increase of 28%.

Q. I wanted you to consider that second one a moment. I was going to come to that. There is a reduction of the flat rate by one cent, but if you bought 20 tokens it took more than a dollar, it took one dollar and 20 cents. You just said the people wouldn't do that. If they wouldn't spend a dollar, they wouldn't be more apt to spend one dollar and twenty cents, would they? A. No.

Q. There was a token rate of six cents as compared with a rate of seven cents on the previous one? A. That's right.

Q. And here is a jump in the riding of 28%. Have you just said you think that 28% was due to the change in the fare? A. I think it's very strongly evidenced that the 28% is in line with the 24.9% decrease when you look at the cash fare. When the cash fare increased from seven to eight cents, the riding fell off 25%, and when the cash fare again was decreased from eight cents to seven cents, the riding picked up about the same amount.

Q. And you really think that those figures of 24.9% and 28%, as large as they are, are largely due to those slight fare changes there? A. I think they are significant.

Q. Isn't Birmingham a highly industrial city? A. Yes.

Q. A city in which riding would be much affected by the fluctuations in business? A. It would be affected by fluctuations in business, yes, industrial business.

Q. Do you know anything about the jitney situation in Birmingham and whether or not these changes weren't due to jitney competition? A. No, I couldn't say as to that.

Q. As a matter of fact, don't you know they were entirely due to jitney competition, and not in any degree to the change in fare? A. I don't know that of my own knowledge and it would seem to me that a jitney situation couldn't have prevailed long to have affected both the up and down figures.

Q. I won't ask you any more, Mr. Wolf, about what you haven't looked up and haven't considered. Of course that is for us to prove, but I want to make clear again that you think that such enormous fluctuations as that could have been due to the relatively slight changes in fare that are shown in the preceding column? A. I think, as I said before, that the changes in fare have an important bearing on the change in riding.

Q. Important enough to make this a fair illustration as to the effect of the changes of fare? A. I am not prepared to say that any particular change in fare had a direct effect on the riding there when a slight increase in fare resulted in a large change in riding, or when a large change in fare resulted in a small change in riding, I don't think the two are directly comparable, but if you take the country as a whole, as portrayed in these ten cities, that it does give a pretty fair indication that riding decreases with increases in fare and that riding increases with decreases in fare.

Q. Let me see if I understand you. When you no longer are prepared to say that that Birmingham illustration is a fair one, you say merely that the table as a whole is? A. No, no. I say, and as I have said right long, that a certain change in fare cannot be taken to result directly in a certain percentage change in riding and I think that there are factors, as I said in my opening testimony, to be considered locally in all these cases,

but I do think that a change in fare from seven to eight cents and again from eight cents back to seven cents had an important bearing on the passengers carried by the Birmingham Railway, Light and Power Company.

Q. Undoubtedly those two Birmingham changes, if they are fair illustrations, are the most striking ones in the table, aren't they, in—— A. In percentages, yes.

Q. And you still think there is a direct connection between those two fare changes on the left and those results in the last column? A. I do, and I am only citing again figures as compiled by the American Electric Railway Association.

Q. I am not disputing the figures. A. I mean to say I am not standing alone in drawing that set as a comparison. That set was drawn first by the association's statisticians.

(Mr. Tingley) For what purpose, Mr. Wolf?

(Mr. Wolf) For the purpose of attempting to show the affect of changes in fares on riding.

Q. Now would you take up Exhibit No. 20 a moment, Mr. Wolf? A. Yes, sir.

Q. That is the exhibit which is intended to show the effect of fare changes on passengers on the Charles Street bus line, isn't it? A. That's right.

Q. Now I ask you how you selected your periods for comparison there yesterday and you said that you took the greatest number of overlapping months, isn't that right? A. That's right.

Q. Your study then, doesn't show what the immediate affect was, it only shows the whole period that followed for a number of months in the way you stated it, doesn't it? A. I thought that was the fairest way to get at it. I will be glad to set it up any other way that will be any fairer.

Q. Have you got the papers on which your exhibit was based before you? A. Yes.

Q. Now have you got the riders by months in your study? A. I have.

Q. When was the ten cent rate introduced? A. June, 1922.

Q. Now how did the next following month, July, compare with the preceeding one? A. July, 1922, was higher than July, 1921.

Q. How much was it higher? A. By 35 thousand, bringing the total of 1922 to 157,590.

Q. Of which 35 thousand was increase? A. That's right. At the same time, the rail passengers were increasing for the same period.

Q. But that was the month after the ten cent fare was introduced? A. That's right.

Q. How about the next month? A. The next month showed an increase of 4,500 passengers, bringing the total to 126,047.

Q. So the ten cent fare apparently wasn't working against the riding effort? A. Going down to November.

Q. What's your next month? A. September it again showed an increase of 13,600.

October showed an increase of 10,000.

November showed a falling off of 13,300. December showed a still larger falling off of 34,800.

Q. And what you have produced in your table is the average for what period of that? A. For the period ending June 30, 1923.

Q. You have taken the whole year up to June? A. That's right.

Q. Now looking at your figures there, do you still think that that falling off was due to increased fares? A. I think there is a great deal to be said on that, yes.

Q. It took four months to manifest itself, didn't it? A. If you compare them with the same months of the previous year that's right.

Q. Don't you know what the real reason for that fall off in November was? Don't you know it was because they routed the Mt. Royal buses to go by Charles Street and thereby took away a large part of the traffic? A. I don't remember, Mr. Howard.

Q. But if that were a fact, it would account for that falling off to a large extent, wouldn't it? A. If that were a fact it would account for some falling off. I am not prepared it would account for that falling off.

Q. Suppose that to be true, that the Mt. Royal bus was routed at the time of the falling off to go along the Charles Street route? A. Yes.

Q. Would you still think that the falling off that resulted four months after the fare was raised to ten cents was the result of raising the fare to ten cents? A. I think you would have to take a long enough period before and after any fare change to get the full effect of it, because otherwise purely seasonal business would throw your figuers out, one way or the other.

Going back to exhibit No. 19 for a minute that's one trouble we found with some of those figures; that we could only get a comparison for two or three months, which I didn't feel was quite comparable.

Q. Then let me ask you the question this way, Mr. Wolf. Admitting the fact, as you do, that there was not a falling off, but a rise for the first four months, and admitting the fact that you don't yet know but which I am asking you to admit for the sake of argument, that at the time of that falling off in November, the Mt. Royal bus was routed so as to get a considerable part of the Charles Street traffic, admitting those two facts, as I say for the sake of argument, you would still say that the illustration given here, that the effect of the ten cent fare was a fair one? A. I would like to study the factors of the cutting in of the Mt. Royal bus line, to say whether or not the figure was fare, but I think the method is fair.

Q. I am asking you whether this still indicates if those two things are true, one of which you admit, that the first four months was not a falling off, and the other I only ask you to admit because we say so, and that is that the

Mt. Royal bus was routed so as to get much of that traffic, would you say there was anything in this drop of minus 4.6 that there was anything in that indicating, by a continuance of the ten cent fare that falling off of passengers? A. I still do, unless the Mt. Royal bus counteracted on this decrease. I think the method is fair. The percentage might be decreased. I do think this in connection with the Charles Street bus line, and I used these calculations, after a great deal of hesitation. I think the Charles Street bus line does go thru such a different kind of territory that the average street car in Baltimore City, that it's right hard to draw an exact comparison.

(Mr. Tingley) As a matter of fact it draws largely from people who are able to pay a ten cent fare than the riders on a street car?

(The Witness) I think so.

(The Chairman) By the way, this is based on actual rides and not on revenues?

(The Witness) Actual rides. Yes, sir, the same as the table before, Mr. Chairman, Ex. No. 19, actual riders and not on revenue.

Q. Referring again to your exhibit No. 20, the 4.6 per cent, the last figure on the table, is a bringing down of the 4.6 per cent above, isn't it, or is it a different 4.6? A. That's the same.

Q. The upper one is not any one calendar year, is it? A. Yes. I got at that for the same period, for the period ending June 30, 1923, as compared with the period ending June 30, 1922.

Q. What I mean is the table at the foot is supposed to be that of the calendar year? A. The heading just above those two lines at the bottom explains that.

Q. It's a year ending June 30? A. That's right.

Q. And your bus figure covers years. You have an overlap of a year? A. Both figures cover the year ending June 30, 1923.

Q. Your bus figure in that particular case you had a whole year to compare? A. Yes, sir.

Q. And you compared the whole year? A. That's right. As I said yesterday in all of these figures where I had a year I used it which I thought was the fairest way to get at it.

Q. Now your Exhibit No. 21 is a study of the East Fayette Street bus passengers, isn't it? A. That's right.

(The Chairman) Excuse me one moment, Mr. Wolf, this Exhibit No. 20 deals with the Charles Street line alone?

(The Witness) Yes, sir.

(The Chairman) Not the Mt. Royal line, although it runs out Charles Street?

(The Witness) That's right. The Charles Street bus line only.

Q. Of course, Mr. Wolf, the routing of the Mt. Royal line so far as it takes away any part of the traffic of the Charles Street line would be reflected in the travel on the Charles Street line? A. The Mt. Royal line does follow the Charles Street Line for a few blocks.

(The Chairman) It goes clear out to Union Station practically.

(Mr. Tingley) How many blocks is it, Mr. Wolf?

(The Witness) It's from Baltimore Street to Mt. Royal Avenue, if that's the street. That must be sixteen blocks.

Q. It's from Baltimore Street to within reach of the two stations, isn't it? A. Some walking distance, yes, sir. I don't thing it had such a tremendous effect, but I will be glad to study it out.

(The Chairman) But you did not include the line that runs out Mt. Royal Avenue in the Charles Street Buses?

(The Witness) No, sir.

Q. I was asking you, Mr. Wolf, about Exhibit No. 21, which was the East Fayette Street Bus route. Your study there covers two years, during which there has been, I believe, a uniform fare, hasn't there? A. That's right.

Q. And that fare was what? A. Seven cents.

Q. Now down at the foot you have below "Per Cent of Increase," you have got the November and December figures? A. Those were simply put on there as explanatory figures. Of course, we have not yet gotten the figures for the same two months of 1927.

Q. You show by that though a very large jump between November and December, don't you? A. Yes.

Q. Isn't that coincident with the withdrawal of car service on a parallel route? A. I think there is some reflection there, yes.

Q. As a matter of fact there was car service withdrawn, wasn't it? A. That's right. The rerouting took place in November, 1926.

Q. And very naturally withdrawing car service on that parallel route would have an effect on increased bus riders, wouldn't it? A. Have some effect. I don't believe, though, in passing it would have anything like 22 per cent effect.

Q. No. 22 was your graph in which you undertook to compare what you call the cost of living with the average fares, wasn't it? A. That's right, using the United States Bureau of Labor Statistics all commodities wholesale index.

Q. And, of course, your average rate of fares starting with five cents flat and ending with the proposed ten cent flat showed an almost 200 per cent increase, didn't it? A. That's right.

Q. Why do you call that a cost of living graph? Isn't there a substantial difference between cost of living and average prices of wholesale commodities? Isn't there a well recognized distinction between the two? A. The United States Bureau of Labor Statistics gets up a number of different curves and trends, index figures. This represented the latest information we had available, and inasmuch as Baltimore City is pretty largely a wholesale and industrial city, it seemed to me it was a fair curve to use for those purposes.

Q. I am not criticising the platting of the wholesale commodity curve for the purposes of comparison. What I am trying to criticize is calling it a cost of living curve, and what I am asking you isn't the cost of living curve well recognized as something that isn't the same as the wholesale commodity curve, but is based on various items, including fuel, rent, clothing and certain selected things, and isn't it a recognized thing that the cost of living curve has not dropped since the peak near as much as the wholesale commodity curve as you have used here? A. It depends on what cost of living curve you take, Mr. Howard.

Q. I mean take any cost of living curve, and hasn't it dropped less than the wholesale commodity curve has since the peak of the post-war period? A. I think in most cost of living curves that I have seen there has been a less decrease—let me put it the other way, a little greater increase since 1914 than the wholesale commodity index. I am hesitating to say there has been a less drop from the peak.

Q. Let me put it this way. If you had adopted any of the cost of living figures that you speak of, the discrepancy at the end that you have got here between the fare curve and the dotted curve that would then represent the cost of living wouldn't be as great as it is on this graph, would it? A. I think that most cost of living curves would have brought me out a little higher than this dotted line, that's right. Just how much I am not sure.

(Mr. Tingley) And the dotted line is below seven and a half cents?

(The Witness) That's right.

Q. The point I want to bring out is that this is a wholesale commodity curve. A. Yes, sir. I started out to be very careful to use that wholesale index, because I realize that every curve depends upon the material that goes into it.

Q. Why did you change it then and call it a cost of living curve? A. Did I call it that in my direct testimony?

Q. I understood you to call it that, comparison of the cost of living with car fares in Baltimore. A. Yes.

Q. Now it is not really a comparison with the cost of living is it? A. It is one comparison. As I say you can get any number of curves that will give different results.

(Mr. Tingley) Can you find one that would bring you out on the level of that ten cent fare?

(The Witness) I am certain I couldn't.

Q. Nobody ever supposed though that anyone lived on this average selection of these wholesale commodities, did they? A. Not very many people living on these cost of living curves either, I think.

Q. But that is an attempt to represent an average or an ascertainment of what people do live on. The wholesale commodity curve is not. A. Mr. Mitten's market basket was an attempt to get at that too.

Q. But you don't live off of market baskets alone. You have to have clothing and rent and fuel? A. That's right. This wholesale index I think includes all those items, just weighted differently.

Q. I only want to call attention to the fact that you call this a comparison of the cost of living with car fares. A. Yes.

Q. And I want to ask you again if it would not have been fairer to say a comparison of average prices of wholesale commodities with car fares. A. I admit that it would have, yes.

Q. Exhibit No. 23 is merely a tabular form that you have reduced to a graph in Exhibit No. 22, isn't it? A. That's right.

Q. So what has been said about the plat would be applicable to what can be said about the table in No. 23, isn't it? A. That's right.

Q. Now exhibit No. 23, which was an exhibit under which the present fares in cities having a population of over 100,000 people are shown, up to what point of time did you bring the study of that? A. July 1st.

Q. You haven't taken account of any subsequent changes since then? A. No sir. It might be interesting to point out some statistics I worked up from that table last evening, Mr. Howard, if I may be permitted here.

Q. I think perhaps I might finish what I have to ask you. A. Mr. Howard, I don't know but what I made a mistake in saying that this was only up to July 1st. Mr. Nodder called my atention to the fact that one change in Erie, Pa., took place on August 15th, 1927.

Q. In the main, though, your recollection is you did not have information after July? A. That's right. This was taken from the table of the American Electric Railway Associations table several months ago.

Q. Not the United Railway's Association? A. No, that's something different.

(The Chairman) Q. Was any later data available to you?

(The Witness) Not as comparable as that, Mr. Chairman, I think I might have pieced it up from various sources of information had I had the time to do it. This information was not available for several months after July 1st.

Q. That table involves a great many details and I think we can perhaps go over it better by our own witnesses than taking the time to go over it with Mr. Wolf.

Exhibit No. 25, Mr. Wolf, "Comparison of results of street railway operation in 1926 in other cities comparable to Baltimore." I think you explained in your direct examination how you got the figures under the heading "Base," isn't that right? A. Tried to.

Q. That is the place where there was most room for selection, isn't it, Mr. Wolf? A. That's right.

Q. You had to do more constructive work of your own under that column than any of the others? A. I tried to get an expression of opinion from the Commission representatives in these various states upon which to base that claim, and I think I can support from information I have, ever figure I used. I will be glad to make

any information available to your people if they want to go over it at any time. I had some interesting comments from some of the people as to what the fares ought to be and so on.

Q. Exhibit No. 26 is a somewhat different sort of table isn't it? A. Yes.

Q. The first two paragraphs are your own composition and the following paragraphs on the first page are extracts or summaries of what was said in those different reviews, aren't they? A. That's right.

Q. One of the authorities you quote is Mr. Babson, isn't it? A. That's right.

Q. And you quote him as saying that the immediate outlook is moderately good? A. That's right.

Q. Doesn't he say a good many things in what you are quoting from that gives a pessimistic outlook for next year? Doesn't he say that there is going to be a steady mortality in the form of failures next year? A. I don't see that readily on the statement I have here.

Q. Moderate failures this fall, but heavy mortality next year? A. I don't see that in my statement.

Q. Wasn't what you went on business outlook for 1928? A. The particular excerpt that I have here was gotten up by Westheimer Survey of October, 1927.

Q. Didn't Mr. Babson say this, outlook for 1928, good volume of business, less than in 1927? A. That isn't on this.

Q. Mr. Babson must be two-faced.

(Mr. Clark) All those fellows are. It depends on which side of the market they are on.

Q. Where did you get your Harvard Economic Service? Have you that before you? A. Yes. I began to read from this bulletin gotten out by the Westheimer Survey.

Q. We have the original sources here apparently. Didn't Harvard Economic Service say this:

"Because of the exceptional ease in money and also because of the conservatism of business during the past year, the outlook is definitely favorable to the maintenance of general business during the first half of 1928 in something like its present volume." A. I haven't that quotation.

(Mr. Tingley) That doesn't conflict with what you have, does it, Mr. Wolf?

(The Witness) No sir.

Q. You think maintenance of general business during the first half of 1928 in something like its present volume is such an optimistic outlook? A. I think he just didn't carry it beyond that point.

Q. You thing he implied it would be better after that? A. Most of these people are referring to the availability of money, as an index or rather the index of loanable funds, and drawing from that chart it would look as if the latter part of next year was going to be much better than the first part, and that the first part would be better than the 1927 business.

Q. So much for that exhibit. Exhibit No. 27 I don't think calls for any explanation, does it Mr. Wolf? A. Except it shows this paper's outlook on business conditions and particularly the cartoonist.

Q. You sincerely think it does that? A. I would certainly give the paper credit for seriousness in printing it.

Q. That's one of the things that affects your own view? A. I thought it was interesting as to what this particular paper or papers thought of this thing.

Q. I just want to get what data your judgment was based on? A. I think my exhibit No. 26 explains the factors on which I base my conclusion.

(The Chairman) Well, no cartoonist knows anything about business.

Q. Now your Exhibit No. 28 was a summary of the statement issued by President Coolidge, wasn't it? A. That's right.

Q. Isn't it part of the business of the President to be optimistic?

(Mr. Tingley) The President of a railway Company?

Q. Well I won't ask you to answer that, but look in the second column and see if the President didn't say this:

"The increase in the use of automobiles has been a factor in the loss of railroad revenue, but this automobile increase in itself is a sign of prosperity widely distributed." A. That's right.

Q. And then a little lower down he says:

"Automobile production again is increasing."

A. That's right.

Q. That seems to conflict with one of your statements on the previous exhibit. A. It does.

Q. Are you more influenced by President Coolidge—— A. On that particular statement, I am influenced by the facts.

Q. Then you don't agree with the President on that? A. No, I don't.

(Mr. Clark) That isn't a statement by the President, it's by Mr. Essary.

(The Chairman) Mr. Clark, this statement by Mr. Essary at the very outset says:

"The White House today issued a statement of reassurance concerning present-day prosperity. It is viewed here as having been brought about by the recent behavior of the stock market."

That came direct from the White House. The President isn't directly quoted.

(Mr. Tingley) White House spokesman.

Q. Now Mr. Wolf, Exhibit No. 29 is an estimate of passenger revenue of the United Railways for 1928, assuming a 1% increase in full fare passengers, isn't it? A. That's right.

Q. Where did you get that one per cent? That's a pure assumption, isn't it? A. That's the assumption I made for the purpose of this exhibit.

Q. Is it based on the President's letter we just read, or just what? A. It's based on my general idea of just what next year will bring forth and conservatively at that, I think.

Q. Why do you assume so much greater increase than 1% in some of these special fares like Bethlehem and others? A. I only followed there the general trend of those fares during the past several years, and I think that the trends shows a greater increase than 1% in some of them, less in others.

The third county zone for example, I took approximately the same as this year because there has been very little change in the last several years. The same in the second county zone. The Bethlehem Steel passengers have been increasing much faster than 1%, as have the first county passengers.

Q. In other words this represents your judgment? A. That's right. I will be glad to tell you how I got those figures.

Q. Let me ask you one thing, Mr. Wolf. You said just now, I understand, that any increase would be burdensome that caused a falling off of passengers, and in your table of results in different other cities there were fallings off that you interpretated to increases of even less than a cent in fares. Isn't that right? A. Yes.

Q. Like the one in Birmingham, a very large substantial falling off? A. There was an increase of one cent there.

Q. Why have you supposed that a one cent charge for transfers, unlike other increase in fares, is not going to have a falling off of passengers?

(Mr. Tingley) He didn't.

(The Witness) If you will look at the bottom of the table you will see I have assumed there would be a 20% falling off.

Q. In the use of transfers? But you do not assume any falling off at all in the amount of passengers who paid. In other words, you assume that the fact that a man has to pay one cent for transfers is not going to effect riding at all, except insofar as it affects whether the man is going to take and use a transfer or not, isn't that right? A. I assumed this, that under this condition of fares, this combination of fares there would be an increase of 1% in adult passengers and a falling off in the number of transfer passengers. Now, I am not saying and I have not said here, what increase in adult passengers I would have used had we not figured an increase in the transfer passenger charge.

Q. Let me make that clear, Mr. Wolf. Everybody who uses a transfer with the exception of free riders and some others, begins by being a fare passengers, doesn't it? A. That's right.

Q. Before he can use a transfer he has got to become a rider? A. That's right.

Q. And in the falling off of 20% that you have assumed to be due to the charge for transfers— A. That's right.

Q. You have figured that falling off for the use of transfers? A. That's right.

Q. But you haven't considered that the mass of general riders would be otherwise be affected at all in this calculation? A. Except to this extent, Mr. Howard, that I have only considered a 1% increase of full fare passengers under this combination.

Q. What was the increase you supposed if you hadn't put a transfer charge on? A. I didn't work that out.

Q. Is it true that you arrived at your 1% by first supposing a falling off and then supposing— A. I arrived at it by assuming the condiitions which I felt would obtain under this combination of fares.

Q. Now it is true, isn't it, if any man wants to go from one place to another he very often will have to use a transfer or else walk a considerable distance, so that the question of whether a charge for transfers is made is in substance, an increase in fares as much as a direct in-

crease in fares would be? A. It is for a certain percentage of the people, as I tried to show in this next exhibit. It is more particularly for the long haul rider.

Q. Now this item at the foot of your table of an assumed 20% in loss of transfer riders. That's something that you had almost no data to go on? A. That's right. That is a pure assumption.

Q. It's a pure assumption? A. It seemed to me what would obtain under these conditions.

Q. You don't know whether it would be 30 or 40, or 10 or 12, it's a guess, isn't it? A. It can be only an estimate.

Q. An estimate is a broad term. A. This is an estimate and presents what I think is the maximum falling off.

Q. But a man may make an estimate of the cost of a building which would be within 10 or 20% of the result. A. I hope this is within that too.

Q. And there are other matters of an estimate which is a much more hazardous thing? A. That's right.

Q. And this is something that you have almost no data to go on and had to create what you call a pure assumption, isn't that right? A. It is an assumption.

Q. Or a guess, isn't it? Isn't it a fair thing to call it a guess? A. If you please. As Eddie Cantor said: "Grape Fruit under any other name will still squirt in your eye."'

Q. We will call it a guess then. That was No. 29.

Now No. 30 is the result of a study that you had made under passengers on the Harford Road cars between North Avenue and Monument Street, I think you said of three days, didn't you? A. That's right.

Q. And you selected the peak hours, didn't you? A. That's correct.

Q. What Monument Street crossing is that? A. Monument and Aisquith Streets.

Q. That's a relatively short section then, isn't it? It's from North Avenue? A. What do you mean?

Q. What is the lineal distance that your study covered from North Avenue south to what? A. Monument and Aisquith.

Q. Are these all the stopping places between those two? A. Those are all the transfer points between those two as I recall it.

Q. I want to get the idea. You have reduced your results to an average, haven't you? A. That's right.

Q. And the average results show 66 people arriving at North Avenue? A. That's right.

Q. And a certain number getting off and a certain number getting on and then the remainder riding on to the other corner? A. That's right.

Q. Am I to suppose that anybody got on or off at any of those other intermediate stopping places? A. No, I don't think it would have any affect on the table.

Q. How could you count it without counting that? Suppose it were a single car instead of an average car? A. Yes.

Q. You arrive at North Avenue with 66? A. Yes.

Q. 12 got on, four got off, that left 58? A. Yes.

Q. Well it wouldn't arrive at Federal Street with 58? A. That's right.

Q. So that if five got off there wouldn't be 53 left if anybody had gotten off or on between? A. Our check would indicate that the number who got off and got on between those transfer points was very small.

Q. It apparently would indicate it was so small that there wasn't as much as one whole passenger? A. That's so.

Q. Is that so? A. That's true, according to our figures, yes. My view this is an average set up. It isn't an attempt to portray the thing accurately, because you would bring it out to tenths of passengers.

Q. When you have an average of zero here that means an average of less than one? A. Yes, I think that's right.

Q. You don't mean to say that during your whole study nobody got on at Federal Street? It means less than one during the peak time? A. That's right.

Q. And it also means that during the average of your whole study that less than one got off between those transfer stations, is that it? A. That's right.

Q. Now your study is based on this supposition, isn't it, Mr. Wolf, that everybody who got on or off at those stopping places came with a transfer and was using a transfer when he got off? A. Yes.

Q. As a matter of fact passengers get on and off at those corners that don't use transfers? A. That's right.

Q. But you ignored them? A. The big bulk of these passengers are transfer passengers.

Q. Your study is based on the assumption too, that everybody who got on or off at these points used transfers, and you think it wasn't based on the assumption that nobody got on or off in between, but it was based on the assumption that it was less than one? A. Our results showed that there were very few passengers got off in between. In other words the main assumption was that the bulk of this business coming in in the morning came below Monument and Aisquith Streets, except for the transfer business.

Q. The purpose of your study was to show the relative amount of long haul transfers as you call them and short haul transfers? A. That's right.

Q. For that purpose what did you consider to be a long haul and what a short haul? A. The passengers who came in in the morning and got off at North Avenue, certainly originated above North Avenue, and they were therefore classified as long haul passengers.

The passengers who left the car at Federal Street were also considered as long haul passengers under the assumption that there would be very few people coming across North Avenue, transferring south to Harford Road and hence transferring at Federal Street. There may have been a passenger or two who boarded the car south of North Avenue and who left it at Federal Street to

transfer there to that line, but I have not allowed for that passenger.

Q. Let me see if I couldn't express it in a word. Every passenger who got on during your study was a short haul passenger. Everyone who got off was a long haul passenger, isn't that the assumption? A. That's right. In the morning. The reverse is true in the evening.

Q. And the reverse in the evening? A. That's right.

Q. Exhibits No. 31, Mr. Wolf Now we are in the realm of estimation again, aren't we? A. That's right. More educated perhaps.

(Mr. Tingley) More so than on the ten cent fare exhibits you think.

(The Witness) I hope so.

Q. This is your estimated passenger revenue for 1928 with an eight cent full fare and a five cent county fare? A. That's right.

Q. What is your suppostion there as to the effect on riding with your half cent increase? A. That the total number of full fare passengers would be 3.17% increase over 1926, which was the same experience as for the first nine months of 1927, and if my prediction as to 1928 being a better year than 1927 is true I think I have discounted somewhat the effect of the increase in passengers.

Q. Let me get that straight. You say you have assumed in 1928, you are comparing it with 1926 now and not 1927? A. That's right.

Q. And you assume a what percentage over 1926? A. 3.17%.

(Mr. Tingley) That's decrease.

(The Witness) That's right.

Q. Expressing that in terms of 1927, how would that effect— A. That was exactly the decrease that was experienced for the first nine months of 1927, so if that same percentage had held for the 12 months of 1927, 1928 would be the same as 1927.

Q. So you assume your 1928 result here will be the same as the first nine months of 1927? A. That's right.

Q. And the first nine months of 1927 as compared with previous years shows better than the whole year is going to show, isn't that a fact? A. That's still nebulous.

Q. As far as we have gone indicates that, doesn't it? The first nine months show better than the figures up to the latest date you have got them for, don't they? A. In percentage of revenue passengers, decrease?

Q. As compared with previous years? A. Yes, but of course, Mr. Howard, you have to remember this, we are now comparing the heavy months of last year, namely November, which I think was about the second heaviest month of the United, and then we're going to compare December, so we naturally expect a little further falling off as compared with 1926. Now, when we go to 1928 we naturally expect an increase over 1927.

Q. I am asking you to compare the period of 1927 that has elapsed with the corresponding period of 1926. You have said yourself the longer the period the more fairer the result, haven't you? A. Yes. I haven't reduced that to figures, Mr. Howard.

Q. Let me get you straight again, Mr. Wolf. You assume in your estimate of what the result of adding one cent for transfers would be, you assume that that would have how much effect on the future year's business. You dock it how much? Only to the extent to which you dock transfers? A. The transfer passengers would be decreased 20%, and in spite of that transfer charge the full fare passengers would increase 1%.

Q. Now you assume on the contrary that one half cent increase in the fare would have what result on the passengers as a whole? A. Would increase the number of passengers in 1928 over 1927 by 300,000. In other words a very slight increase, believing as I do that the eight cent straight fare would have a more adverse effect that the present fares with the one cent transfer charge.

(Mr. Toole) What is the next to the last column, that total? Is that correct?

(The Witness) That .0773?

(Mr. Toole) Yes.

(The Witness) That's the average fare paid by all of the riders estimated for 1928. 7.73 cents.

(The Chairman) A little less than seven and three-quarter cents.

(The Witness) Yes, sir.

Q. Now Exhibit No. 32, Mr. Wolf, that's another one of these exhibits, isn't it? A. That's right.

Q. That's based on the supposition that there were no change in the present fares, except a charge of one cent for transfers and a full fare charge for all employees and all concessionaires? A. That's right.

Q. You got your figures as to the saving that would result from changing full fares to employees, you get that from Mr. Nodder's studies, didn't you? A. That's right.

Q. Do you vouch for that, too, in any way? A. I would take his word as far as it being correct.

Q. You know enough of his study to know that he has assumed that with the exception of the effect that the use of transfers would have on it, he assumes that the people who ride for nothing would ride just as much if they were charged full fare, is that right? A. Yes.

Q. Don't you think, to express it your way, that a change from a zero fare to 7½% fare, would be a burdensome increase and show its effect on the riding? A. Yes, I do.

Q. Isn't that a flaw in his calculation?

(Mr. Tingley) We took Mr. Emmons' word for the fact that it wouldn't. I thought he said the fare couldn't have any effect on riding.

(Mr. Howard) I don't think he made any such broad assertion as that, Mr. Tingley.

(Mr. Tingley) I don't see how he could.

Q. Don't you know, too, as a matter of fact, that many

of those tickets are used for Company business, when in any case the Company would have to incur the expense if it abolished the use of the tickets on that occasions? A. Very few of those.

Q. It is a fact, though, isn't it? A. I would hesitate to say that it is. I think possibly most of the Company business done by these people would be by automobile.

Q. The study is Mr. Nodder's in the main and not yours? A. That's right.

Q. But you must have noticed the fact that he allowed nothing for any falling off in riding due to the increase from zero to full fare, didn't you? A. If I told the whole truth about it, it would be this: that he used the factor of 85, something for a decrease and I didn't go behind that. As I recall that was an allowance for tickets issued but not used.

Q. That was based on the use of transfers. A. No. He used the 85, something which was allowance for tickets issued but not used.

Q. And he also made an allowance for this fact; that at present no transfers are given on tickets? A. That's right, but I didn't go behind those figures.

Q. Was your attention drawn to the fact that no allowance was made for any diminution in riding? A. No. I don't think Mr. Nodder was taking those points into consideration. It would be interesting to know if the Company really thinks there would be a great increase in falling off.

Q. My present interest, Mr. Wolf, is in knowing whether you and Mr. Nodder think there would be no falling off due to that fact? A. Perhaps Mr. Nodder and I didn't co-ordinate our value of service so well.

Q. He will speak for himself? A. That's right.

Q. Now your next exhibit No. 33, which is a comparison of net income estimated for 1928 with tests applied by the Commission in 1924, that is based on your estimate of the effect of an eight cent fare or a one cent transfer charge, isn't it? A. It is a comparison of the effect of the

one cent transfer charge and full fare for employees and concessionaires, with other fares remaining in the same.

Q. Well that's a simple arithmetical application of the results in the previous table of the figures heretofore used by the Commission, isn't it? A. That's right. It does show I think that that combination of fares would meet all the tests heretofore applied by the Commission in addition to the 6% net on the present fair value.

Q. Now Ex. No. 34 is supposed to be based on the Company's calculations in its exhibits as a result of the ten cent fare, isn't it? A. That's right. That's ex. No. 34.

Q. Now you have made a number of changes which are indicated by the note a, b, c, d, etc? A. That's right.

Q. To bring about a different result. In the first place, you have scaled their estimate of operating expenses in the way you have described by taking out part of what they claim for power and part of what they claim for accidents and part of what they claim for changes? A. That's right.

Q. And then under B, you have used the 5% on gross for depreciation? A. That's right.

Q. Instead of any allowance of value? A. That's right.

Q. Then under taxes you have disallowed the additional taxes that they claim, is that right? A. That's right.

Q. And you do that because you think, I think you used the expression in testiying to that that the Commission ought to be satisfied that it's final before they base action on it, is that right? A. That's right.

Q. When would you be satisfied that it was final? A. Whenever the State Tax Commission takes the final action. The State Tax Commission now has before it, as I understand, the task of appraising the capital stock of the Company, and if it sets a figure for that capital stock equal to last year's figure the $75,000 which the Company has paid, or will pay this year for increased real estate taxes, will be absorbed in the capital stock taxes, so that the total taxes will be approximately the same as last year.

Q. This has reference to taxes for 1927, hasn't it? A. 1928.

Q. I mean the tax bill that the question has arisen about? A. That's right.

Q. And that is based on reports made last spring, aren't they? It's taxes that ought to be paid before aren't they? A. It's taxes to be paid for 1927, that's right, but the case has not yet been decided, Mr. Howard, and unless and until it is decided no one would know whether it is zero, as I have used or 75 thousand dollars which the Company has used.

Q. Aren't you assuming that the Commission would depart from the Law if they strike that out? A. No, I wouldn't presume to interpret the law for them, but it is up to them to determine how much they will assess the capital stock for them.

Q. Now your exhibit No. 35 is an effort to guess a little further in to the future? A. No, sir, it's an effort to put into figures the estimates and testimony of the Company.

Q. Now the Company in its exhibits has undertaken to make an estimate of what the result of the ten cent fare would be for 1928? A. That's right.

Q. Now what you have done is to attempt to produce that two years longer, isn't that right, 1929 and '30? A. Based on the Company's statements.

Q. Now isn't your method to assume that the changes that take place in 1928 continue progressively thru each of these other years? A. Just according to the testimony.

Q. Now let's see about that. In the first place, the passenger revenue, they assume that there would be a fall off in passengers travelling next year, didn't they? A. 5%, that's right.

Q. You have assumed that same fall off to keep on continuing progressively, haven't you? A. No, sir, not quite, Mr. Howard. The testimony was to the effect that next year may show a 5% decrease if the ten cent fare is granted, and that a 3% decrease would be experienced

otherwise and would probably be experienced for the next several years.

(Mr. Tingley) Mr. Emmons testified to that under cross-examination.

(The Witness) So in 1929 and 1930 I have decreased the passenger revenue of the preceeding year by three per cent.

Q. So you have assumed a continuance in each of those years of a shrinkage of 3%? A. I only tried to put down in figures what was actually said. May I carry it a step further, Mr. Howard?

For the final column of 1930.

Q. The second 1930 column is the 11 cent fare? A. And for that purpose I did assume a 5% decrease over 1929, before adjusting for the increased fare.

Q. Now you have assumed for this calculation that taxes will progressively each year, haven't you? A. Slightly, yes. That seemed to me to be fair.

Q. And you have assumed that there will be a wage increase each year again and again of $130,000? A. No assumption of mine, Mr. Howard. Only what was said here.

(Mr. Tingley) One was contracted, one was promised, and one was hoped for.

Q. Your results are figured on the supposition that those progressive increases and decreases all take effect, aren't they? A. No assumption of mine, Mr. Howard.

Q. Isn't it all assumption?

(Mr. Tingley) It's all Mr. Emmons' assumption.

(The Witness) I am only putting on paper what was actually said here on the witness stand.

NOTE: The Commission then adjourned for the purpose of taking a short recess.

AFTER SHORT RECESS.

CROSS EXAMINATION

(Continued).

By Mr. Howard:

Q. Mr. Wolf, exhibit No. 36, is an attempt to tabulate two different years and compare them for certain purposes and the tables speak for itself, doesn't it? A. That's right.

Q. And Exhibit No. 37 is an effort to compare the cost of superintendence in two consecutive years, is it not? A. That's right.

Q. Now we come to Exhibit No. 38. These are some exhibits that have to do with the depreciation account, aren't they? A. Yes, sir.

Q. Suppose we take No. 38 and No. 39 up together. No. 38 as I understand is an attempt to figure out a depreciation allowance from the Company's claim as to the condition of its property in the valuation case, and Exhibit No. 39 is a similar attempt to figure out a depreciation allowance from the Commission's findings as to condition of property in the rate case, is that right. A. That's correct.

Q. They both are based on this idea, aren't they? That if the property in question had an average life at the time of the Commission's finding of so many years—— A. Average age.

Q. An average age, I should say at the time of the Commissions findings that then if you divide the observed depreciation by that average age, you get the amount to be set by each year to provide for depreciation or replacement, is that right? A. To provide for that depreciation estimated by the Company and found by the Commission, that's right.

Q. Now a very important element in those tables is the age problem? A. That's right.

Q. How did you get that, because that's something you have to figure out or estimate it in some way, didn't you?

A. That's right. We went back and arrived as near as we could at the time when each element each constructed.

Q. Went back to what? A. To our own knowledge and information that we had as to when each element was constructed.

Q. Well, let's take the first item, track and roadway, you have put down 15 years as the average age at the time of the valuation? A. Yes.

Q. How did you arrive at that? What information did you have. Is that a weighted average or a mere average? A. That was gotten at by a study of the retirements or rebuilding program of the Company over the past several years. The Company has been rebuilding tracks that have been in service approximately 27 years. During the war they did not rebuild very much track, and taking that fact into consideration, as well as considering the amount of rebuilding they are doing at the present time, we arrived at a figure of 30 years as representing the oldest track in service, not individually but collectively, and the average of 30 years from nothing gave us 15 years.

Q. So it wasn't a weighted average, it was a mere rough average you struck off as 30 as the oldest and zero? A. It is an average based on the Company's experience as near as we could get at it.

Q. But as I understand your method was to find the oldest track of all, or 30 years and of course the newest track or zero and the average of that was 15? A. We didn't take the oldest individual piece of track. I don't mean to say that. We took the oldest lot of track as represented by the replacements of the Company since 1923.

(Mr. Tingley) There is some individual track older than 30 years, isn't there, Mr. Wolf?

(The Witness) Oh, yes.

Q. Now following that method did you do it with reference to the present date or 1924, the valuation date? A. The valuation date.

Q. If you figured that the oldest then track of any considerable extent was 30 years, and you halved for your average? A. That's right.

Q. And does that process describe the way you got the other ages there in that column? A. For bridges, tressels and culverts we had what we thought was very reliable information based very largely on what we gathered at the time of the valuation, plus some testimony introduced by the Company's witnesses as to the years in which the large items were built. Those items were weighted, and an allowance made for small culverts which we did not have.

For the buildings the same remarks as applied to the bridges, tressels and culverts, still hold.

For the electric system we averaged it out somewhat similar to the track and roadway.

For cars we had rather accurate figures.

For station equipment we had what we thought was accurate data.

Q. So, Mr. Wolf, that describes the method at which you arrived at the figures under the age column? A. That's right.

Q. Now let me ask again to make sure. These two tables are an effort to arrive at what would be a proper depreciation allowance, the method followed being to take the extent of observed depreciation at the time of the valuation case, and divide that by what you find to be the average age of the property in question. A. That's true insofar only as the Company's exhibits are concerned, not insofar as the Commission's findings are concerned, because the commission in its opinion found, that the depreciation occurred from whatever source, and that was the depreciation which they considered. In other words they considered something over and above the pure physical depreciation which the Company's witnesses portrayed.

Q. I don't want to go over each of these tables separately, because a good deal would apply to both? A. That's right.

Q. So I want to dispose first of the Company table and then take up the Commission one. A. That's the only main difference between the two in the method.

Q. On the Company table you have assumed the accrued depreciation to be that which was claimed by the Company in the valuation case? A. That's right.

Q. And which was not allowed by the Commission? A. That's right.

Q. So has that any special significance? Isn't the important one the Commission finding? A. I don't think so, except it perhaps shows some comparison of the Company's claim for annual depreciation and what the Company thinks of the condition of its property when it comes to a valuation case.

Q. But why go back of a finding of the Commission arrived at as a result of long hearings, why go back of that in order to take the figures advanced by the Company and not allowed, as the basis of your calculation?

(Mr. Tingley) It shows the changed point of view.

Q. Aren't we entitled to assume the Commission's view is to be adopted? A. If you did that 100% on your claims for depreciation today, we wouldn't have any quarrel with you.

Q. Now let's come to the Commission one. I understood you to say that the Commission one, the exhibits based on the Commission findings, that that had a greater authority for two reasons, in the first place because it is based on the Commission's finding and not on the Company's claim, but then you said further that the Commission had expressly said it took obsolescence into account? A. That's right.

Q. And that that was another reason for giving this a greater finality? A. That's right.

Q. Now is that a sincere attempt, Mr. Wolf, to find out what the depreciation rate ought to be? A. That is a sincere attempt to find out what the depreciation rate ought to be based on the evidence and conclusions in the valuation case.

Q. Let me see if it is. Turn your attention, for a moment, to the item of cars. You say that there ought to be allowed, I will call it one cent, it's 1.01%, isn't it? A. Yes.

Q. Doesn't that lead to the conclusion that an allowance of one percent a year will suffice to replace cars, and doesn't that involve the absurd hypothesis that a car on the average will last nearly 100 years? A. I think there was some testimony in the valuation case to the effect that if any item of property was maintained it would have an indefinite life.

Q. I am asking you, Mr. Wolf, tho, is it not an absurd hypothesis to suppose that street railway cars will remain in service, or may remain in service for anything like 100 years? Isn't that an absurdity? A. I wouldn't attach that word absurd when we are discussing a Commission decision.

Q. I didn't ask that. Do you mean to attribute to the Commission in this case, to attribute to the Commission in the valuation case the absurd finding that street railway cars on the average will last 100 years? A. The result of this computation, absurd tho you may term it, means that 1% set aside annually on the reproduction cost of railway cars would have produced the depreciation estimated by the Commission to have existed at that time.

Q. That brings me back to the question I asked just now. I asked if this was a sincere effort to find out what would be a proper depreciation charge? I am now going to ask you this question. Isn't this really an attempt to throw ridicule on the finding of the Commission in the valuation case? A. No.

(Mr. Tingley) By whom, Mr. Howard? You or by Mr. Wolf?

(Mr. Howard) By Mr. Wolf.

Q. (by Mr. Howard) Isn't it an attempt to discredit the finding of 15% depreciation of whatever the figure was on cars in that case. A. I would rather say it was

an attempt to show that the $2,200,000 claimed by the Company was discredited.

Q. Now I want to get your own fair judgement from you on this. Don't you think it is an absurd thing to talk about a street railway car lasting on the average anything like 100 years? Isn't that an absurdity? A. I don't think they will last that long.

Q. Isn't that an absurdity? Don't you know it? A. Well, I know that with the rebuilding of your cars, you are looking forward now to a life of 30 and 50 years.

Q. But do you conceive it possible that on the average street railway cars should last 100 years? A. I don't think they would, no.

Q. Don't you know it's an absurdity? A. I don't think they would last that long.

(Mr. Toole) Did you ever hear of the one-horse-shay?

(Mr. Clark) You can make a car last that long.

(Mr. Howard) But they don't last that long.

(Mr. Clark) By replacing one part and then another part and then another part you can give it an indefiinite life, and that's what you do.

(Mr. Howard) Mr. Clark knows as well as Mr. Wolf that an average car don't last 100 years.

(The Chairman) Well, when was the street car system established?

(Mr. Tingley) 1859, the first one.

(The Chairman) How many cars in service then are in service now?

(Mr. Tingley) Some of them look as tho they were.

Q. Now, Mr. Wolf, the point I want to direct your attention to is this: the allowance that we estimate for ought to provide fairly for the necessary retirements that we have in the course of our business, ought's it? That's the purpose of it? A. The amount you are asking for.

Q. The amount of depreciation allowance that we want or ought to get, whether we are asking for it or whether it's given to us, the idea of it is an allowance to cover the retirement of property that is necessarily retired in the course of business? A. That's right. That's the amount that you ought to be allowed. The original cost of it Mr. Howard, I mean.

Q. Based on orignal cost, yes. Now an allowance of 1% per annum on cars therefore, necessarily implies the idea that on the average cars would only be retired in somewhat less than one in 100 years, doesn't it? A. Yes, that's so.

Q. And isn't therefore, I ask you again, isn't your effort by this table not one to show what would be a fair allowance to cover retirements, but one to cast doubt on the finding of the Commission in the valuation case, that there was an observed depreciation of only 15 and a fraction percent on cars? A. I don't think so in a way, Mr. Howard. Here was a great deal of testimony as to the excellent maintenance of the property and the amount spent by the Company for maintaining its property, and that was one of the strong arguments, and I am sure an appealing argument why the Commission found this percentage of depreciation.

Q. And it appeals to you so much that you think 1% per annum is a fair allowance to cover retirements of cars? A. I don't think I have said that.

Q. Why did you put it in here then? A. Because the exhibit is just what is says, annual depreciation allowance, equivalent to the Commission's findings.

Q. Well, you don't think it. You are attributing it to the Commission? A. No, I am saying that is the result of the computation, and I believe the computation is right.

Q. Now you say that's a necessary result of the computation used by the Commission in the rate case? A. That's right.

Q. And is that necessary result, as used, is that 1% a year is a fair allowance then I should say you are trying

to disprove the finding of the Commission rather than prove what a fair depreciation allowance would be. A. You might put it that way, I don't.

Q. Now let's see that a moment. You are assuming that observed depreciation that when you measure that at any time, that the amount of that divided by the number of years the property has lived will give you the probable life of that property, aren't you, in service? A. No.

Q. Isn't your assumption here that inasmuch as cars show 15 and a fraction percent accrued depreciation, that you can infer from that by a ration the number of years that those cars will remain in service, that's what you have done, isn't it? A. The 15% found by the Commission included something over and above the amount disclosed by the inspection of those cars.

Q. Your assumption then is this, Mr. Wolf; that that 15% representing the accrued depreciation as found by the Commission, that you can determine from that the probable or avarage life of those cars, or of other material in service. The point I want to make is this; let me see if I can put it plainer. There are certain factors that work against the life of cars, that do not work unifomly. A. That's correct.

Q. A car may not only become worn out from use on the tracks, but it may become obsolete? A. That's right.

Q. That may happen very quickly? A. That's right.

Q. Whether that has happened or not, whether it is likely to happen in the near future is not something which you can tell from looking at it? A. That's right.

Q. Hence besides the mortality of cars, that occurs thru their wearing out, you have a mortality that comes in a less expected way, and that wipes them out and that cannot be observed as accrued depreciation, isn't that right? A. Well, at any one time, a piece of equipment might be found to be practically or partially obsolete, and insofar as that could be determined, I take it the Commission made allowance for it.

Q. But obsolescence doesn't occur uniformly does it? A. No. Nor does future depreciation.

Q. It come pretty suddenly, doesn't it? A. Not always. Take an automobile that's no longer manufactured. The model is no longer manufactured, that don't become obsolute the day they quit making that model, but it becomes increasinly obsolete as it goes on and it's more difficult to get repair parts for it.

Q. And if I understand you correctly, you understand the Commission's determination to be in substance a finding that 1% a year set aside is enought to provide for the retirement of cars? A. It's enough to provide for a depreciation found by the Commission to have existed from all causes in 1924.

Q. Let me get at that another way. The cars that they observed in 1924, didn't include those that have gone out of service in preceding years, did they? A. No.

Q. So all that they observed, was the accrued depreciation on the then existing cars, is that right? A. All that they considered was the accrued depreciation.

Q. And during the same period in which that observed depreciation had occurred, hadn't a lot of cars gone out due to depreciation and obsolescence and other factors? A. There had been cars go out, yes.

Q. And that wasn't included in the observation of the accrued depreciation? A. No, because those cars didn't exist as of the valuation date.

Q. In other words all that they allowed for in the valuation under the head of accrued depreciation was the observed depreciation in the then existing cars, isn't that right? A. If you will interpret the word observed tho, we will get on the same footing.

Q. With some possible allowance for insipient obsolescence? A. An inadequacy.

Q. Then it comes back to this: that your interpretation of the Commission''s decision in the valuation case, as shown by this table, is that 1% per annum, ought to be a proper allowance for cars, and you say further

that you don't mean to say that you yourself think that 1% is enough but you attribute that to the Commission and pass the responsibility of it to the Commission, because of their finding in the valuation case? A. I say that that is the result of the computation as I have tried to explain it.

Q. So then we come down to this, Mr. Wolf, that this table of yours is an attempt to translate into figures applicable to a depreciation allowance what you take to be the result of the Commission's findings in the valuation case? A. Correct.

Q. And when you reach the result of that that 1% per annum is enough to provide for cars, I have already asked you the question and I will ask it again, do you intend therby to throw doubt on the finding of the Commission in the valuation case that's already been determined or are you claiming that 1% in your own opinion is really an adequate amount to allow for the retirement of cars? A. Neither one.

Q. Neither one, or the other, or either? A. Neither.

Q. People's Counsel Ex. No. 40, Mr. Wolf. A. Yes.

Q. This ties on to your two previous exhibits, doesn't it? A. That's right. The percentages are taken from exhibits 38 and 39.

Q. It's simply an attempt to cary forth the results in there? A. That's right. It's to show the application of those percentages to original cost.

Q. And of course if there are any fallacies or weaknesses inherent in the previous exhibits, that this refers to they are carried forward of course in this, aren't they? A. Oh, yes.

Q. It involves therefore the same supposition under Ex. No. 39, that about 1% per annum is a sufficient allowance for cars, and under Ex. No. 38, by the way, that was about 150 years that you assumed for the life of a car, wasn't it according to your method? A. That's right. According to the Company's testimony.

Q. But the Company never testified to that? A. Well they testified as to the physical condition.

Q. Existing condition? A. Physical condition. There was a difference between the Company's claim and the Commission's finding.

Q. That's the last of your exhibits? A. That's right.

(Mr. Howard) That's all.

REDIRECT EXAMINATION.

By Mr. Tingley:

Q. Mr. Wolf, do you recall Mr. Emmons' testimony to the effect that ten cents was the limit of service value for a unit fare for a car ride in Baltimore?

(Mr. Howard) I don't think he quite said that.

Q. Assuming that the record shows Mr. Emmons did say that, and assuming further that the record shows that Mr. Emmons said that increases in fare below that amount had little or no effect on car riding, wouldn't that indicate that in Mr. Emmons' opinion no rate below ten cents could be burdensome to the public?

(Mr. Howard) What meaning of the word burdensome?

(Mr. Tingley) In the meaning made by Mr. Wolf.

(Mr. Markell) Does Mr. Wolf interpret that?

(Mr. Tingley) I think the Commission will interpret it.

(Mr. Howard) I don't think you have Mr. Emmons' testimony correct.

(Mr. Tingley) I think the record will show that, Mr. Howard.

(The Witness) When Mr. Emmons said that a ten cent fare was a proper fare and would not show a material falling off in passengers, under my interpretation of the word burdensome as used here, his testimony would mean that a ten cent fare was not a burden on the rider.

Q. And that despite the fact that the passengers who rode the cars might think so, to the extent of ceasing to

ride or ceasing to ride to the extent they had before. A. I take it that he was giving his own view of the matter.

Q. He was giving his view and not that of the person that pays the fare? A. I would think so.

Q. Taking Exhibit No. 19, Mr. Wolf, I think Mr. Howard asked you if that didn't show that the period studied was one of a general trend of fare increases, is that correct? A. He asked me that, yes.

Q. How many of the ten cities shown show increases to a ten cent fare? A. Only two, and those are the only two, by the way, Mr. Tingley, that show increases to any fare higher than Baltimore.

Q. Mr. Wolf, if this study doesn't show that an increase in fare up to the present fare level charged by the Company results in decreased riding, why do you think that the Association of Electric Railways Companies got it out, wasn't it gotten out for that purpose?

(Mr. Howard) Are you asking him something he knows, or something you are asking him to guess?

(Mr. Tingley) Suppose we let him answer that, Mr. Howard.

(The Witness) My assumption would be that they got it out in order to show to the member companies the possible effect of changes in fares.

Q. Taking exhibit No. 22 Mr. Wolf. That shows that the United States Bureau of Labor Statistics, all commodities wholesale curve at the present time is somewhat below the present level of carfare, doesn't it? A. That's right.

Q. Mr. Howard objects to that and thinks you should have chosen a curve that would bring it higher, doesn't he?

(Mr. Howard) I don't think that's a fair expression of what my objection was.

Q. Did your studies discover any curve that could have been called a cost of living curve that would have been above the ten cent line as shown on this exhibit,

Mr. Wolf. A. Absolutely not. We have curves ranging all over the map, but none of them as high as the ten cent curve.

Q. Mr. Wolf, in connection with Exhibit No. 24, you said that you had made some studies last night, that you would like to give, but Mr. Howard wasn't interested in them. Will you give them now? A. It's simply statistics as disclosed by this report.

Of the 81 cities listed as having a population of 100,000 or more, only 19 of them have a fare higher than Baltimore. There are 30 cities with a ten cent fare. Only one of these has a straight ten cent fare with no tokens. Ten of them, or one third the number have an eight and one-third cent token fare, six of them have an eight and one-third cent token fare, plus a pass system, one of them has a seven and a half cent token fare, plus a pass system, and when the Commission recalls that at the present time 97% of the full fare passengers in Baltimore are using the token fare they will see that the ten cent-seven and a half cent fare, plus a weekly pass, if applied to Baltimore, would cause practically no increase in fare, and probably a decrease.

There is one of these 30 cities with a ten cent fare which has not a token fare but which does have a pass. and 11 of them with ten cent fares charge 7½c or lower for tokens with no passes.

I thought it was just interesting in the light of finding out what the tendency was in these so-called ten cent fare cities.

(Commissioner Purcell) Do you know how many of those charge for transfers?

(The Witness) No sir, I do not, Mr. Commissioner, but I can find out for you.

(The Chairman) I think in the emergency hearing or early in this hearing some reference was made to the Boston situation. As a result of the ten cent fare the city authorities granted a six cent return, and there was a malling below that six per cent return, which the city

made up. Can you briefly say what that situation is? What that arrangement is in Boston, do you know?

(The Witness) Yes sir, I have the details of it here. The City under its agreement guarantees the Boston Elevated 6% dividends on stock, not return, after interest charges, the whole being based on a total of about 100,000,000 dollars in securities. In addition to that the City has built and leased to the Boston Elevated certain tracks and property. The State also has built and leased some tracks and property to the Boston Elevated. In 1926 operating with a ten cent fare the City still had to make up $482,749.12.

(The Charman) Did that investment on which the return was granted represent the fair value of the property?

(The Witness) That was based on the amount of securities outstanding, and perhaps Mr. Emmons could tell more particularly about this point, but as I recall, there was a valuation started and probably used as some sort of basis for arriving at this adjustment, but the adjustment is based on the amount of the securities, rather than any value of the property.

(The Chairman) Then as a matter of fact the ten cent fare didn't pay a 6% return on the value of the property?

(The Witness) That's right, the ten cent fare did not pay a 6% dividend.

Q. Mr. Wolf, in connection with exhibit No. 29, I think Mr. Howard criticized that exhibit because it did not show that the 1 cent transfer charge did not result in any loss in passengers other than the loss in transfer passengers. If a one cent transfer charge would discourage riding, and result in a loss of passengers would you think a ten cent straight fare would result in an increase or a decrease as a result of that fare? A. I think that a ten cent fare would undoubtedly result in an increased loss.

(Mr. Toole) May I ask just one question on Ex. No.

19? Mr. Howard's suggestion there that the falling off due to business conditions, or might have been in Birmingham. Isn't it true that if there are bad business conditions that a ten cent fare would cause more falling off?

(The Witness) I think so.

(Mr. Toole) It would cause even more falling off even than under ordinary conditions?

(The Witness) That would certainly be my idea.

CROSS-EXAMINATION (Continued).

By Mr. Clark:

Q. Mr. Wolf, you read that bulletin No. 116 on which Ex. No. 18 is based did you not? A. That's right. I have it here if you want it.

Q. There's no reference in that bulletin to a jitney situation in Birmingham affecting the number of riders or revenue passengers? A. Not that I recall. I don't think there is.

Q. Mr. Wolf, concerning Ex. No. 24, this is the exhibit in which there are 81 cities included in this study? A. That's right.

Q. I notice a number of them have weekly passes. A. You will notice that's confined very largely to the ten cent fare cities.

Q. That's what I was going to ask you. How many weekly passes are found in that study? About ten, aren't there? A. There are eight weekly passes, or weekly identification cards in the ten cent fare cities, one among the eight cent fare cities and one on a five cent city, in San Diego, California.

Q. In Illinois or in Chicago it only refers to the surface lines, don't it? A. That's right.

(The Chairman) Have you any figures, Mr. Wolf, or are any figures obtainable to show the effect on the Com-

pany's revenues of the weekly pass other than the amount paid for the weekly pass itself? In other words, I mean is there anything to show what the average ride taken on the weekly pass yields to the Company?

(The Witness) What it would yield this Company?

(The Chairman) Any company.

(The Witness) I think Mr. Jackson quoted some figures in the valuation case to show the results in certain cities where it had been installed.

(The Chairman) My recollection of Mr. Jackson's testimony was that it was extremely indefinite as to what the user of the weekly pass paid for the actual ride that he took?

(Mr. Tingley) I think that's correct.

(The Witness) That's true. I think Mr. Emmons stated that Pittsburgh considers 18 rides per week on a weekly pass in computing the rides.

(The Chairman) But he could take fifty?

(The Witness) Yes.

EXAMINATION CONCLUDED.

NOTE: The Commission then adjourned for the purpose of taking a Recess.

AFTER RECESS.

Thereupon—

CHARLES NODDER,

a witness of lawful age, produced on behalf of the Public Service Commission of Maryland, having heretofore been duly sworn, according to law, and whose examination was suspended for the purpose of hearing another witness, resumed the stand, was examined and testified as follows:

CROSS-EXAMINATION.

By Mr. Markell:

Q. Mr. Nodder, as of course we all know, you are the

Accountant of the Commission and expert accountant and as your exhibits show, most of them are based on a very careful and thorough study of the various accounts of the Company, are they not? A. Yes, sir.

Q. Now in the various suggestions that you have offered to the Commission in your testimony, and involved in some of these exhibits that you have filed, are we to understand that you are making these suggestions to the Commission as suggestions, from the point of view of proper accounting, or that you are also expressing an opinion as to the law of these various questions, as it effects rate making, or as to the facts as it effects railway operations and costs? A. What suggestions, may I ask, are you referring to?

Q. I am speaking of your suggestions as a whole. I want to know whether they are to be understood from the Accountant's point of view, or whether the figures you submit are submitted as the view of the law or of the fact? A. Some of the suggestions I have made have dealt with accounting problems, some perhaps an opinion. I have not tried to interpret any law.

Q. You mean opinions on accounting or opinion on law. A. Opinions following an occounting experience.

Q. You mean opinions on law, or on accounting? A. Not on law, on accounting.

Q. So you have taken these various facts and the various accounts that you had to deal with and you have presented them, in what you understand to be the correct accounting methods? A. As a general rule, yes. Practically all of them. I don't know just which particular suggestions you have in mind, and I am only answering in the dark.

Q. I just want to avoid arguing with you by trying to get at the outset the scope of your testimony.

So that the matters that are matters of accounting that you have presented to the Commission, you present as your opinion of the proper accounting, and you

don't undertake to express any opinion as to the application of the law to those matters for rate making?

(Mr. Tingley) I think that will be conceded, Mr. Markell.

(The Witness) I tried to stay away from the law.

Q. And how about the operations and construction, engineering, do you undertake to express any opinion, do you offer your opinion as an expert on railway costs as distinguished from records of those matters on the books? A. No, I don't think I have tried to inject that into it at all.

Q. You haven't undertaken to testify either as to facts or as to opinions on operations or results except insofar as they are reflected in the books? A. I think that's correct.

Q. Now, for instance, in your Ex. No. 46, which is the large exhibit that you filed you have there the Commission's valuation of 70 million dollars? A. Yes, sir.

Q. In 1924. And at the very beginning you deduct from the Commission's valuation, the sum of $90,000 for grants in aid of construction. That's your idea of proper accounting, is it? A. Yes sir, it's arriving at a rate base.

Q. You say in arriving at a rate base. What do you mean? Do you mean that is the proper method of accounting, or the proper method of arriving at a rate base? A. I think one covers the other.

Q. Don't you know the rules of accounting having nothing whatever to do with arriving at rate bases? A. I don't know about that.

(Mr. Tingley) Are you asking as an accountant or as a lawyer?

(Mr. Markell) Asking as a lawyer, but asking him as an accountant.

(The Witness) I think the matter of accountancy has a lot to do with fixing rate bases.

Q. It has a lot to do with fixing rate bases, but I will ask you the question again. Is there a single rule in the system of accounting prescribed by this Commission that prescribes how to determine rate bases? A. I know of none, no.

Q. Then in this deduction of $90,000 you have in mind the accounting problem, or did you have in mind to correct the Commission's decision as to the value of this Company's property for rate making?

(Commissioner Harper) Mr. Markell, I think after he states his reasons from the standpoint of accounting, it's a matter of argument then as to how far it should effect the rate base.

(Mr. Markell) It's a matter of argument if he states his goal from the accountant's point of view.

(The Witness) I have stated that.

Q. You think that is proper accounting? A. Yes, sir. Something that is paid for by another party, it seems to me, is not a part of a rate base upon which a Company should be allowed to earn.

Q. But that isn't your opinion as an accountant. That's you opinion as to rate making, isn't it? A. I don't see how I can divorce my opinion. Half of my mind is accounting and half is rate base.

Q. But you have just stated there isn't a rule in the system of accounts that tells how to determine rate bases? A. In the Commission's classification, no.

(Mr. Tingley) Q. Does the Commission's classification of accounts exhaust the entire field of accounting?

(The Witness) I was just going to say no, that it does not.

Q. But so far as the Commission's classification of accounts goes it doesn't deal with that subject? A. It doesn't deal in rate making at all.

Q. So this $90,000 represents property. It's part of the $70,000,000 isn't it? A. Yes sir.

Q. It's part of this Company's property? A. Yes sir.

Q. In 1924? A. Yes sir.

Q. And the Commission found that it was part of it? A. Yes sir.

Q. But it is your opinion that the Company should not be allowed to earn on that? A. That's correct.

Q. All right. Now let's pass from the law now to operations. On the same page of that exhibit, you have an item there, "cost of removing retired property." A. Yes sir.

Q. And you have $136,000 for 1924 and $149,000 and some odd dollars for 1925, and $96,000 for 1926 and $49,000 for 1927. Now that figure in each case is 20% of the total gross cost of track reconstruction, isn't it? A. Yes sir.

Q. Now you didn't find that allocation of that figure anywhere on the Company's books, did you? A. No, I think I stated that it was very impracticable to find just what that amount is and I think I explained that in order to find that amount a study has to be made of a number of representative jobs in order to find out on the average what it should be.

Q. But you didn't find on any job any differentiation, any cost of moving the old track and cost of new construction? A. No, I said it was impracticable to find it, because the same group of men will tear out the track and build it up.

Q. You haven't any experience in cost of track work, have you? A. I have had considerable experience in track accounting and construction accounting, yes.

Q. Did you ever know of any accounting where there was a separate record kept of the cost of taking up the old track and the cost of laying the new? A. Yes sir.

Q. Where? A. Yes sir, you will find that most of the railroad companies, speaking now of steam railroads always allocate a certain amount of the labor of a new job to the tearing out process.

Q. Don't you remember the testimony in this case, that the salvage on this reconstruction work was just

about enough to pay the cost of taking it out? A. I heard that, but I think the facts don't quite prove that. I think the fact is that it costs more to tear it out than the salvage received.

Q. Don't you know, as a matter of fact that it doesn't cost any more; that the cost of tearing out track is practically nothing at all. A. I certainly don't. I think anyone that can see a gang working will see that it takes almost as long to tear out the tracks as it does in the rebuilding process.

Q. Don't you know that it takes them practically no longer and no more expense to tearing a track out of the ground than it does to dig up the ground to lay a new track? A. No sir, I think it takes longer to tear out the paving and all that sort of stuff to get down to the ties, for instance. It takes as much of that labor as it does to build up the track again.

Q. It takes as much labor—— A. To tear out as it does to build up on track work.

Q. You know it takes labor to dig up a street to lay a new track, don't you? A. Oh yes.

Q. Don't you know it doesn't take any more labor appreciably to dig up a new street than to—— A. I am not discussing that at all. I am discussing track renewals where it has to be dug out to be built up, and it takes as much labor to tear out as it does to build it up.

Q. But don't you know that the cost of digging up a street is part of cost of laying a new track. A. Oh yes, that's exactly what I say; that the cost of tearing it out, digging up that street is almost as much, as a matter of fact it is as much as the rebuilding of that track.

Q. But don't you know that the cost of digging up the street is a part of the cost of the new track, just as this Company has always charged it on its books? A. I wouldn't say so, no.

Q. What is it then? A. It's the cost of tearing out the old, and should be charged against the depreciation reserve.

Q. Against depreciation reserve? A. Yes sir.

Q. The Company never had enough depreciation reserve to cover that? A. That's not my fault. It should have been provided for in the accounts of the Company since its beginning.

Q. Then you mean, Mr. Nodder, by that that if you are valuing a tract at cost reproduction that the track which is laid on a new road you would include not only the cost of laying the track, but the cost of digging up the road, wouldn't you? A. On new work?

Q. On new work? A. Yes sir. Grading the road, I would charge as new work.

Q. So that if you laid new tracks in a road where there has been no track at all before, and it costs $1,582,000 to do that work, of which $136,000 was the cost of digging up the street, the whole $1,582,000 would be the construction cost of that new track? A. Yes sir, of new work.

Q. But if you had a track already in the road, which had cost that $1,582,000 and it wore out, and you laid a new one then when you determined the capital cost of that new track, the new track would be the same kind of track, built at the same cost, we will assume that there has been no change in the price level, you would build the new track at the same place, at the same cost, same track in every respect, but the capital value of that new track would be $136,000 less? A. I don't think you would have the same conditions. You wouldn't have track there in the first place that has to be torn out.

Q. I am just asking you the results. I am not asking you the reason for it. A. Ask that question again, it's too long for me.

Q. Let me repeat it again. I don't want reasons, I just want facts.

Then do I correctly understand you as follows:

If a track is laid in a street where there is no previous track in existence, and the construction of that track, including the digging up of the street and laying the

track cost $1,500,000, of which $125,000 is the cost of digging up the street, the capital cost or value of that track would be $1,500,000 wouldn't it? A. That's correct, yes, on new track.

Q. Now then assume that a period of time passes, and that in this passage of time there is no change in price levels or costs of any kind, and that that track is replaced, and in replacing that track it again costs $1,500,000 to take up the old track and lay down the new, and that includes $150,000 for digging up the street, and the old track and $1,350,000 for the rest of the work, and you testify that that second track, the capital value of that would only be $1,350,000? A. If the price levels are the same, I think you will find that the classification provides that where track is retired and replaced in kind, that the cost of putting in the new should be capitalized and the old retired.

Q. So that in the instance I gave the new would be capitalized at $1,350,000? A. The new would be capitalized and the tearing out would not.

Q. It would be $1,350,000, then in that instance? A. Yes.

(The Chairman) You say the classification retires that?

(The Witness) The classification says where property is replaced, retired and replaced, that the old shall be written out and the old put in, the cost of the new, now to get down to the cost of the new, you have got to tear out the old and tearing out the old is the cost of moving it. Operating expenses that's where is belongs, according to the classification.

Q. And the depreciation reserve should be more equated to cover that? A. I merely spoke of depreciation in connection with your Company. Our classification says those expenses shall be charged to operating expenses. As a matter of fact on account of the fact that you never accrued depreciation prior to 1912, your whole method of handling retirements and depreciation is incorrect from an accounting standpoint and from the standpoint of the Commission's classification.

Q. Now, Mr. Nodder, you said a moment ago, I don't care which is which, I just want to know you said first that that should be charged to depreciation reserve, and now you say it should be charged directly to operating expenses. A. From the Commission's classification it should be charged to operating expenses, because that's the method that you people over there have been following.

Q. But we have never had rates enough to charge to operating expenses or provisions for depreciation enough to charge it to that. A. That's because you haven't asked for them, or perhaps the situation has been such that the rate you might have asked for might have been exorbitant. You just haven't charged it.

Q. At any rate, we haven't charged it to operating expenses and we haven't had depreciation reserve enough to cover these things. They have been charged to capital, haven't they? A. Partly.

Q. Well, the whole of this has been charged to capital? A. All of this, yes. On your books tho you have taken out part of that.

Q. For original cost? A. For original cost.

Q. Yes, but so far as this cost of digging up is concerned, that's all included in part of our book cost? A. About half of it is charged in capital.

Q. But all of this you have been speaking about? A. All of this yes, but on your books you take about half of that in computing your estimated original cost.

Q. But all of this has been charged to capital on our books, this 136? A. Part of it, I say that for this reason, that the method of writing out your original cost is to work this total by a series of factors, of labor and material increases, in order to arrive at an estimated original cost, and it is approximately 50-50, so that half of it is charged into fixed capital.

Q. But the 136 is divided between fixed capital and depreciation reserve just as the $1,582,000 is divided? A. That's correct.

Q. Now, Mr. Nodder, will you turn to Ex. No. 40, People's Counsel Ex. No. 40.

(Mr. Tingley) He didn't put that in.

(Mr. Markell) I know he didn't.

Q. (By Mr. Markell) You are familiar with these exhibits of Mr. Wolf, aren't you? A. I have listened to Mr. Wolf putting them in.

Q. You and he corroborated in preparing them? A. Some of them. Yes. Not on No. 40.

Q. No. 40 has an item there, book additions, that is obviously an accounting matter. You are able to testify as to the correctness of that, aren't you?

(Mr. Tingley) If the Commission considers it cross examination to examine a witness on an exhibit he didn't put in, all right.

(Mr. Markell) It's an accounting matter. He has covered the whole of the Company's accounting accounts.

Q. (By Mr. Markell) Is that a correct figure? A. I don't know how that figure is made up.

(Mr. Tingley) It isn't cross examination to ask a witness about an exhibit that he didn't put in.

(The Witness) I think Mr. Wolf can well answer that.

(Mr. Markell) I think the field on cross examination is very wide.

(The Chairman) Didn't Mr. Wolf testify that Mr. Nodder assisted him on certain of these exhibits?

(Mr. Tingley) On certain ones. Mr. Nodder didn't assist him on this one.

(Commissioner Harper) I should think you would have to make him your own witness.

Q. Mr. Nodder, your own exhibit No. 46, which contains some 30 pages, does show not only the retirements at valuation figures, but it purports to show book figures, doesn't it? A. Yes, sir.

Q. Well, can you tell me from your own work, if you

don't know the correctness of Mr. Wolf, will you tell me what the amount of the book additions of this Company's property were from the 31st of December, 1923, to the 31st of December, 1926? The net book additions? A. I can tell you that very readily from Ex. No. 52, my balance sheet, by taking the amount of $90,394,877.14 and deduct from that $88,571,841.34.

Q. You are taking December, 1926? A. Yes, sir, that's the date you spoke of.

Q. The figure I have is ninety-six million? A. 90 million.

Q. Oh, yes, I see. $90,394,877.14. A. And deduct from that the balance December 31, 1923, will give you $88,-571,841.34, or a difference of $1,823,000 in round figures.

Q. Now, Mr. Nodder, you don't mean that that is the correct net amount of book additions as compared with the valuation? A. That's your book additions in the road and equipment accounts. Now there are certain other additions. For instance, on the same balance sheet, deferred assets, improvement to property, there is about $100,000 additional right there. Under deferred assets, payment of 10% on account of equipment purchased there is something in there.

Just where it shows on this balance sheets I can't say, but there is on the Maryland Electric—well, that is the total of the book additions that I have just spoken of.

Q. Now, Mr. Nodder, aren't there some adjustment of property that was in the valuation of January 1, 1924, that didn't get on the books either on the asset or the write-off side? A. Yes, sir, there are some.

Q. You haven't made those? A. If you take my exhibit No. 46 and take sheet No. 2 for 1924, take the end of the figures in the column "not in valuation," under "additions," and subtract from that the retirements under the column "book figures" that will give you net additions for 1924.

If you do the same thing on Sheet No. 12 for 1925 and Sheet No. 25 for 1926 and add those three together you will get the net book additions.

Q. I tried to do that and I couldn't find the figures checked with anything else in the case. A. Those are the figures.

Q. Aren't there transfer figures in both of those cases? A. There are some, yes, some transfer from Maryland Electric to the United.

Q. You have the figure on Sheet No. 2, there is $440,000 transferred? A. That's correct.

Q. You don't mean that would be deducted to you? You say, net book additions? A. No, that would have to be taken into consideration. I will have to go over this very carefully to give you an exact figure.

Q. What would be the figure there for 1924? Would that 440 be the only one you would deduct from this million 824 below? A. In 1924 you have to take the difference between $1,824,000, the net additions in the first column.

Q. Yes. A. And take from it the first two items in the "In valuation" column $12,082.11.

Q. Yes. A. I think that will give you a net addition for that year of $1,812,790.70. The items there in the "In valuation" column of $489,845.55 for Maryland Electric cars gives the amount that is shown down under retirements of $440,861, plus the 10% that is carried in suspense on the United's books.

Q. I. see. Now then turn to the next sheet No. 12. You have there net book additions $689,000. What deduction would you have to make from that? A. Take out that $27,080, the amount in the "In valuation" column.

Q. So that would give you $662,021.39? A. That's correct.

Q. And then the next page is page 19, I believe, what would you get there? What change would you make there? A. I would have used the net additions, which happens to be a red figure.

Q. You would use that without change? A. Yes.

Q. So that for the three years computed in this way, you would have net book additions of about $1,800,000? A. That's correct.

Q. Do you think those are the only adjustments that are necessary? I don't know, I am only asking for information? A. Those are the only book adjustments that are necessary, but I have corrected those retirements to valuation figures.

Q. Yes, I am speaking of the book figures now? A. Book figures, I think that's all.

Q. You think the figure on Mr. Wolf's exhibit No. 40, which is the same as Company's Ex. No. 6, $2,545,000 is correct? A. From the figure we have here, it seems to be.

Q. Did you compare your figures with the Company's Exhibit No. 6? A. I have not.

Q. You don't know whether the Company's adjustment there is correct or incorrect. A. Right now, I don't. I would have to give it some study.

Q. Now, in arriving at these book additions, that we have now roughly $1,800,000, those don't involve any change in this item of retired property does it? That includes them or excludes them? A. That does not include adjustments for them for valuation figures. It includes retirements at back figures.

Q. That includes the reconstruction of tracks as it's now carried on the books without the change you have made? A. That's correct.

Q. I see. Now the result however, is that the book additions for those three years amount to roughly $1,800,000? A. That's correct.

Q. So that if you would add to the value of the property that the company had on the first of January 1924, $70,000,000 as found by the Commission, exclusive of easements, of course you would have had if the book additions could be added to the physical value of 1924, that would have made the value at the end of 1926, $71,800,000. A. That's correct.

Q. But when we turn to your Ex. No. 46 of sheet 1, we find that when you make the additions at actual cost in that way you compute actual cost and make retirements at valuation figures, we arrive at a figure of $70,640,000. A. That's right.

Q. So that in the course of those three years, therefore according to your figures, the Company has lost $1,200,000 in actual value of property as compared with its book additions? A. That shows on the face of the exhibit, yes, sir.

Q. Don't you think those book additions are correctly made? A. The book additions of the one million eight, with the exception of that cost of removal of property, I think are correctly made.

Q. Yes, and the difference between retiring property at valuation cost and at book cost results in this difference of —— A. That plus the cost of removal amounts to $1,200,000.

Q. And that shrinkage between the difference in cost and value is something that the Company would just lose according to your theory, would it not? A. It would lose it because it gains it in the valuation, it seems to me.

Q. So that altho the Commission said the Company had that property and it belonged to it and it was entitled to a return on it, it would gradually lose that? A. If it doesn't have it any more it can't earn a return on that.

Q. It gradually loses it as its retired? A. That's proper and natural.

Q. It doesn't get out of income any allowance to compensate it for the value of the property it loses? A. It gets a depreciation allowance.

Q. But the depreciation allowance falls $1,200,000 short in three years. I mean on your own theory. If the depreciation allowance were sufficient—— A. The depreciation allowance over three years has amounted to something like $2,400,000.

Q. We will come to the depreciation allowance in a moment. The depreciation allowance according to your theory would not be entitled to take up that difference

between cost and value? The Company would just lose that as it goes along? A. The loss in the value there it seems to me is $1,200,000.

Q. Yes. A. The depreciation that has been set up is $2,500,000, therefore the Company has set up practically twice as much as it has lost in property.

Q. We are not talking about that, the $2,500,000 is to cover all the depreciation, including the cost price, that's been written off, isn't it? A. The cost price, yes.

Q. Now what we are talking about now, is something over and above cost price, and you tell the Commission that the Company's depreciation allowance should not be entitled or fixed so as to make any provision for that one million two, isn't that correct? A. That's right.

Q. That the depreciation allowance should be sufficient to retire cost? A. To retire cost.

Q. But the Company should lose that $1,200,000 as they go along? A. That's correct.

(Mr. Tingley) Sometimes it's a loss and sometimes it's a gain, isn't it.

(The Witness) May be either way.

Q. Well, I am glad to get your view of the loss.

(Mr. Tingley) We are glad to get yours, Mr. Markell.

(Mr. Markell) You will get it in the course of time.

(The Witness) If that's law, I am glad I am not a lawyer.

Q. Now, Mr. Nodder, in your exhibit No. 42, I believe it was, and you went over this Company's accounts, and some exhibits relating to those accounts, on the subject of depreciation, I believe? A. Yes, sir.

Q. And on the first sheet of this exhibit, you have the Company's charges to depreciation in various years. A. For the depreciation reserve, yes.

Q. Yes. That's retirements that were charged to that

reserve? A. That's the various charges, not all retirements.

Q. Yes. Well on the second sheet you distinguish between the charges and retirements, don't you? A. Yes, sir.

Q. On the second sheet you eliminate from the total, you first make some additions to retirements that didn't come out of depreciation reserve, and then you make some deductions that were taken out of depreciation reserve? A. Yes, sir.

Q. And one of those deductions is that item of Pratt Street Power House, isn't it, $1,252,000? A. That's right.

Q. And on the other side you show retirements of about a million and a half dollars that didn't come out of depreciation reserve, partly been taken out of profit and loss and partly still in suspense, that's correct, isn't it? A. That's right.

Q. That includes the $898,000 item up there. That represented some three hundred cars that were burnt up in 1926? A. A large part of it represented those cars.

Q. Those cars the Company got no allowance for in the valuation, did they? A. I don't think so.

Q. And they stood on the books without being written off out of depreciation reserve all those years, didn't they? A. That's right.

Q. And not having any reserve to write them out of, they put them in suspense in 1926? A. They had reserve but I presume they figured it wasn't adequate to cover all of those.

Q. Now, on the third page of this same exhibit you show three items of so-called retirements, you mean by that, of course, book retirements, don't you? A. Yes, sir.

Q. Out of depreciation reserve? A. Yes, sir.

Q. And that's $8,705,000 the third list under retirements from 1912 to 1926, is the amount that is shown in

the next to the last column on sheet No. 2, isn't it? A. That is correct.

Q. In other words, that is arrived at by taking the total charges of depreciation reserve of $9,000,000 in those 15 years, adding a million and a half that were retired thru suspense and profit and loss and then eliminating this one and a quarter for the Pratt Street Power house sale and about $600,000 of other items? A. That's right.

Q. To get that $8,705,000? A. That's right.

Q. So that those are the only retirements of property that were actually on the books for that period, weren't they? A. That were actually retired on the books, yes, sir.

Q. Now of course, you don't mean to suggest that that was all the property that the Company really retired in those years, do you? A. If that accounting system of the Company means anything, that's all they retired. If it doesn't retire this property, then its accounting system is of no use.

Q. But you know as a matter of fact, don't you, Mr. Nodder, as this valuation case demonstrated to the Company's sorrow, that the Company in the long period of its existence had had many kinds of property in the various changes that it had gone thru, particularly cars, that it would find itself with cars that had gone out of use and that it had no further use for, that practically weren't taken off the books at all, but when the valuation came the Company got no credit for it, that's a fact, isn't it? A. I know in the valuation they got no credit for it unless they were used and useful. Whether they were on the books, I don't know.

Q. You know as a matter of fact that there is a very large amount of cars and other property that naturally went out of use that they didn't get any credit for that are not included in that $8,705,000, don't you? A. I don't know that.

Q. Don't you know it about the $2,400,000 before that? A. I don't know. There may have been cars retired dur-

ing that period. I can't go back now and reconstruct those accounts.

Q. You are merely taking the facts of the accounts? A. Yes, sir.

Q. And if the facts of the accounts are accurate, your conclusions would be accurate? A. That's correct.

Q. And if the facts of the accounts were inaccurate your conclusions would be inaccurate? A. That's correct.

Q. You weren't connected with the Commission at the time of the valuation case, were you? A. No, sir.

Q. And you haven't studied the record and the briefs in that case? A. Not in detail. It would take me a year to do it.

Q. And you don't know that the Company had, as a matter of fact, and had before that valuation, a great many millions of dollars of property that had not been written off the books that were excluded from the valuation? A. I don't know that. I know a lot of property was excluded from the valuation. The particular instance I know of is this item of cars that you spoke of. They are excluded from the valuation, but they were not written off until later.

Q. Let's turn to the last sheet in the same exhibit. You do know from that exhibit that there was as much as $8,000,000 of old property that antedated the electric system in the consolidation, don't you? A. That's what I understand from People's Council Ex. No. 13 in that case.

Q. Did you study that exhibit of People's Counsel No. 13? A. I looked it over, yes.

Q. Do you know how it was prepared? A. Yes, sir.

Q. What is the basis of it? A. It's based, as I understand it on an appraisal made in 1914 by Stone & Webster from which was written back additions and retirements.

Q. So that it isn't, as the Commission might have

gathered from your testimony, it isn't based on any figure that begins in 1899; it is based on a figure that begins in 1913 and goes back? A. That's correct. As a matter of fact, I think I brought out in my direct testimony, that the book figure around 1899 was something like 58 or 59 million dollars. If I didn't I should have done it and I intended to do that.

Q. Do you understand the figures in this middle column to represent cost or value? A. They represent a value written back, that is a value as of 1914, written back to 1899, by the deductions of retirements and additional capital put in.

Q. So they don't there represent either present cost of reproduction or original cost? A. That's correct.

Q. And the Commission said, in its opinion, that it's impossible for the Commission to ascertain what is usually known as the original cost of property? A. That is correct, and that's the reason I specifically stated that this exhibit was based on People's Counsel Exhibit Number 13 in the previous valuation case.

Q. The Company didn't offer this exhibit? A. No, sir. People's Counsel Exhibit No. 13.

Q. And it doesn't represent original cost nor does it represent present cost of reproduction, does it? A. I guess that's about the term that should be used. In other words, the figures of 1914 were considered fairly representative of what the costs were back there.

Q. Now you spoke of Stone and Webster. Don't you recall that the only thing Stone and Webster had to do with this was that they had prepared the inventory? A. For the Company, yes, sir.

Q. But the prices were put in there by Mr. Feustel and his assistant, Mr. Black? A. I don't know that.

Q. Don't you know that? A. No, sir.

Q. You don't mean to say that the Company made these prices or any of them? A. I took this purely from People's Counsel Ex. No. 13, and People's Counsel in

that case explained that that was his method of arriving at the cost.

Q. You took that for whatever it might be? A. For whatever it might be worth. Now as a matter of fact if the costs were higher or if I had used that first column, for instance, the average fixed capital as stated in that exhibit without deducting the eight million dollars the results would have been so much higher.

Q. I am not talking about the results. I want to get at the method. A. The method is simply stated in the exhibit, but it was taken from People's Counsel Exhibit No. 13 in Case No. 1533.

Q. I thought that was it, so that what these figures really represent, they neither start with the value in 1899, nor do they go back from the present value of 1923 or '27, but they are a mixture of cost of reproduction in 1913 with an attempt to carry that back from book costs and retirements, is it not? A. That is correct.

Q. And with an attempt to carry forward with book costs and retirements from 1913 to date? A. That is correct.

(Mr. Tingley) Do you know whether the Company did or did not claim that the figure ought to be materially higher?

(The Witness) Yes, sir. The opinion of the Commission so stated.

Q. But that is the way in which the thing was carried forward and backward? A. That is correct.

Q. And of course every figure, there, except the figure for 1913 therefore reflects any inaccuracy or imperfection in the Company's books, both forward and backward? A. Yes, sir. I think if you take the object of this particular exhibit that these other points will have no value. In other words, the idea is this: that if a 4% depreciation had been accrued you can take any base you wish, you can take the present valuation and work it backwards, or if you have the figures after the valuation of 1899, and work it forward, the fact remains if you take four percent of that property value or cost, or

whatever you like, you will have a terribly high depreciation reserve. The figures will work approximately the same way whichever way you work it.

Q. You don't mean to say that any figures will work out the same result? A. Not the same result, but the proportionate result will be approximately the same.

Q. Approximately the same as what? A. As this, which shows a depreciation reserve of something like 60% of the costs shown in this second column. Now if that second column were increased or decreased, the corresponding increase or decrease would be reflected in the last column.

Q. Of course, and if it were decreased enough the last column would vanish? A. If it would decrease to nothing, yes, which is ridiculous.

Q. And if it was multiplied by two, the last column would get up to 88 million? A. That is correct.

Q. So you could get any result at all in that third column according to the figures you used in that second column? A. That's correct, and I have used the lowest possible figure that I could find, to base facts on, that's why I deducted the eight million in the first place to come down to a starting point of twenty four million when the book figures in those days was fifty-eight or fifty-nine million dollars.

Q. But the Commission hasn't allowed the Company it's book figures? A. Absolutely not.

Q. And as you have already said, any property that the Company retired that was not retired on the books is not reflected in those figures? A. That is correct.

Q. Now let me ask you one more question about this exhibit. You say in the foot note here that the Company has superseded property amounting to $8,000,000 that ante-dated—— A. 1899.

Q. That ante-dated 1899? A. That is correct.

Q. Now don't you remember that the same exhibit, People's Counsel, claimed that there was already by 1913 there was already included in those figures $4,000,000 of

superseded property in the electric period? A. I don't recall that, no.

Q. You don't recall that? A. No.

Q. Would you recognize it if I showed you the exhibit? A. Yes, I would.

NOTE: Exhibit here handed to Witness.

(The Witness) (After examining exhibit in question) Yes, that's correct.

Q. Now that $4,000,000—that represents—— A. I might state, Mr. Markell, that the eight million dollars was used because in the Commission's opinion, that eight million dollar figure was quoted by the Commission. The Commission said, on page 19 of its opinion:

"The People's Counsel claimed that the actual value of property as of 1899 should be reduced by $8,000,000 because of superseded horse car and cable property, leaving $24,000,000 as the actual value of the physical property in 1899."

Q. That eight million dollars is not included in that $12,500,000 at the foot there, is it? A. No, it is not.

Q. And of course the four million dollars, I just called your attention to is not included there either, is it? A. No, sir.

Q. So that four million dollars, according to People's Counsel, represented four million dollars that had already becomes valueless and superseded by 1913? A. By 1913, yes, but was that property prior to 1899 or subsequent to it.

Q. The exhibit indicates that it was subsequent to it. Q. The eight million dollars applies prior to 1899. The Commission said that value at 1899 should be reduced by eight million dollars. The four million dollars, I don't know.

Q. You don't know anything about that? A. I don't know anything about that.

Q. And you don't know that in that same valuation case the People's Counsel referred to three or four mil-

lion dollars of cost, of cars and equipment which the Company still had, and which hadn't been written off on its books in addition to that four million, do you? A. I know it from your showing me that exhibit.

Q. But you don't know there was another three or four over and above the four million I just showed you? A. No, I don't.

Q. Now, without going into any more detail, as you say you have taken these figures on the facts from the books? A. Yes, sir.

Q. And of course it stands to reason that any retirements of property that the Company lost, that weren't taken off of the books don't appear in this $12,000,000? A. That is correct.

Q. And those retirements help to swell this balance of $32,000,000? A. Yes, sir.

Q. And in the same way of course, any change in the $44,000,000 would have the same effect? A. That is correct.

Q. So that both of these figures are simply you own computations? A. All that I had to take was as far as possible the book figures. If the books are incorrect of course I can't go back of them.

Q. Of course People's Counsel Exhibit wasn't a book figure, was it? A. No, that's right. But you were speaking of the $12,000,000.

Q. None of the figures in the second column of Sheet 4 are on our books, are they? A. Not in that form. The additions and deductions are on the books.

Q. But the base that you are building them on? A. The base is not, no.

Q. As a matter of fact, those figures in the second column, so far as they represent anything, purport to represent the entire physical property of this Company at this hybrid cost and value? A. I think that was the object of the People's Counsel in those days to present that figure.

Q. So they would include not only depreciable prop-

erty but also land and undepreciable property? A. That is correct.

Q. And they would also include overheads? A. If such had been charged.

Q. But what overheads there were they would have included? A. If any had been charged they would be included, yes.

Q. As a matter of fact that valuation as of 1913 was based on hypothetical cost of reproduction, wasn't it? A. Yes, but I believe that these figures that are shown here in this column do not include any of those overheads, that is, except purely construction overheads. I just don't know the form.

Q. Do you know that, Mr. Nodder? A. Let me see the exhibit and I will tell you.

Q. Don't you find down here $1,700,000 cost of financing? A. You are starting with $36,000,000. I start out with $32,000,000.

Q. The $32,000,000 is arrived at by taking off this $4,000,000 on the next page, isn't it? A. No.

Q. This $36,000,000 is 1913? A. That's correct.

Q. Plus the $4,000,000 that you left here? A. Yes.

Q. So this does include overheads? A. It does include some overheads, yes.

Q. It would include all the overheads that were included in that valuation? A. Yes, but not the valuation as put out by the Commission. It only includes as I understand you there cost of financing.

Q. Now nobody has testified on behalf of the Company in this case, as you understand, that the Company claims that they should get an allowance of 4% on the total value of their property including overheads and non-depreciable property, have they? A. No, I don't think they have. They have testified though that they should get 4% on depreciable property at valuation prices.

NOTE: Answer of witness here reread by Reporter.

Q. Mr. Nodder, you filed an exhibit this morning that showed the average interest rates of securities authorized by the Public Service Commission in recent years? A. Yes. Number 51.

Q. Did you segregate the figures for street railways? A. No.

Q. You don't know what they would show? A. No, I do not. I have those figures and can work them up for you if you wish.

Q. Mr. Nodder, on your Exhibit No. 49 you showed the nominal interest rate on this Company's present outstanding bonds? A. The average interest rate.

Q. The average nominal interest rate? A. Yes, sir.

Q. Of course you know perfectly well the effective rate of those bonds is nowhere like the nominal rate?

(Mr. Tingley) What do you mean by the effective rate?

(Mr. Markell) I mean the rate on the basis of what they sell for. The actual yield.

(Mr. Tingley) At the present time, you mean?

(The Witness) I just haven't looked up any quotation on that, but I suppose that the selling price is slightly less than par.

Q. Well, you have the income bonds there at 4%. The slightly less than par there is 49% less, isn't it? A. I just don't know. It's readily obtainable.

Q. And you have there the first 4's at 4%, and don't you know that they are selling on practically a 6 per cent basis? A. They are now and since the conversion of certain of them to six per cent they sell on the same basis as the six per cent bonds.

Q. And the 6 per cent. bonds are below par, aren't they? A. I don't know.

Q. Do you know of any securities of this Company other than bank paper that have been sold on better than

a 6 per cent basis in the last five years? A. No, I don't. The only thing is that this is what the Company is actually paying in interest. This is the average rate that this Company is having to pay out on a par value of its securities.

Q. On a par value. But not on the money it gets. A. As far as the Company is concerned it doesn't matter what the market is on these securities. Right now it still only pays 4¾ per cent.

Q. But the Company can't get any money permanently to finance that 4¾ per cent.? A. I don't believe it would.

Q. It never has. A. Well, some of these things show 4 per cent. I don't know what those first consolidated mortgages sold for originally. I have no record of that.

Q. Well, they are not in your time. A. Not in my time. Not with the Commission anyway.

(Mr. Markell) The witness is with you.

RE-DIRECT EXAMINATION.

By Mr. Tingley:

Q. I have no questions unless you want to add something to your testimony on cross examination, Mr. Nodder. A. It seems to me in connection with this depreciation I might just add that as far as the records of the Company are concerned the average retirements during the sixteen years practically that is shown by my exhibit Number 42 have only been about $555,000 a year as against a credit to the depreciation reserve and a charge to expenses of over $800,000 a year, and I think in spite of any question of some of these figures it's very obvious that if 4 per cent had been set up on the fixed capital, no matter whether we use a hybrid fixed capital or whether we use the valuation taken back or any other basis, the 4 per cent. depreciation would show a figure very, very considerably in excess of actual facts as far as depreciation is concerned.

RE-CROSS EXAMINATION.

By Mr. Markell:

Q. Now, Mr. Nodder, just one moment there. Those figures that you used in that exhibit are based on cost of reproduction in 1913 value, aren't they? A. I understand that People's Counsel Exhibit No. 13 is, yes.

Q. So that from 1913 back every one of these figures, if they are right, represent the full value of all the Company's property depreciable and non-depreciable and overheads, don't they? A. That's correct.

Q. And the further you get back, even 1913 value was higher than cost, wasn't it? A. I don't know that.

Q. You know as a matter of fact that the price trend, the price level was at the bottom in 1897 don't you and was steadily going up? A. I think it's been testified in this case that prices have changed very, very slightly from 1899 until 1914.

Q. Don't you know as a matter of fact that the price level in 1899 was about one-third less than 1913? A. I do not. I don't think that's true.

Q. You don't know that in 1897 the price level reached the low point for all time? A. It was very low down there.

Q. If the price level in 1899 was one third less than in 1913 then all of these figures back from 1913 were progressively above cost? A. I don't agree that it was.

Q. I say it is was. A. If it was, yes.

Q. And regardless of whether it was or not everyone of these figures from 1913 back included, if they were correct, the full value of overheads and non-depreciable property? A. That is correct.

Q. Now just one other question that I overlooked. Now in your exhibt No. 46 you have on Sheet No. 2, when you have retired property at the Commission value, you have added the gross additions including replacements and you have deducted the full Commission value including overheads, haven't you? A. That's correct.

Q. Don't you know that in the Commission's valuation case that the valuation was based on the theory that depreciation is contributed only to the base figure; that the whole amount of depreciation is taken up in the base and the overheads are treated as non-depreciable? A. Wait a moment. Depreciated figures that are shown on sheet No. 2 of $649,000 which are taken from Sheet No. 11 are depreciated figures, and the percentage of depreciation that has been used is the percentage of depreciation that strictly physical property had applied to it the Commission's valuation. In other words, I have only used the depreciation on that figure that the percentage of depreciable property bore to the depreciation allowed by the Commission.

Q. I realize you have done that and we don't take that off. We don't think we are entitled to that. A. I did it for you.

Q. But we do feel that there is no justification for depreciating the overheads without putting in a similar figure for overheads on the additions. A. I have deducted the overheads that applied to that particular property on a percentage basis, but the overheads that have been charged by the Company since 1923 have been included in the gross figures of additions.

Q. Yes, but in the Company's exhibits there were no overheads allowed on either side. A. That is correct.

Q. Then the effect of your change would be in this particular case, if the Company's overheads would happen to be small, and the cost didn't include those items that you want to write off, the effect of that would be when the Company has property which the Company values at a million dollars base figure with $220,000 of overheads, in the course of these three years that million dollars of property is retired and it's replaced by exactly the same kind of property at exactly the same cost, and the result is that there is $1,220,000 deducted from the value of the Company's property, and it is only a million and some trifling addition added on to take its place, isn't that correct? A. That's correct if the trifling addition you speak of, that is the overhead now used

by the Company is trifling. It's something over 22 per cent.

Q. But we have the same property, the same value, the same reproduction value, and this $220,000 has evaporated, is that right? A. No, because the overheads heretofore being charged by the Company are something.

Q. But they are not anything like the $220,000. A. They are not quite as large, but they are 22 per cent. overhead. Your overheads would cover actual overheads with construction work. They do not cover a lot of items which are considered in making a valuation. In other words, the basis of those overheads of making a valuation are not the same as the current overheads. If the Commission would value our property today do you mean to say they would allow us less than 22 per cent.? A. I don't know what they would allow.

Q. Your theory of this thing amounts to this, Mr. Nodder. You say here is our valuation of $70,000,000, and if a million dollars of that property goes out and another million dollars goes in we have exactly the same property, and because you take that isolated job and you don't find the same amount of overheads we lose the balance, is that right, in value? A. I took the $70,000,000 which included overheads and anything which was retired that had an overhead attached to it. In other words, I took out the portion that is retired out of the $70,000,000 and then any additions that are put in are added to that net amount. We start out with $70,000,000's of dollars which is the physical property plus overheads. If the physical property is taken out the overheads follow the physical property and are taken out.

Q. That wasn't the Commission's theory in the valuation, was it? A. I don't know that the Commission expressed any theory in the valuation.

Q. When the Commission was depreciating property the Commission didn't depreciate overheads. A. That's true.

Q. But under your theory—— A. You take out the overheads, yes sir.

Q. We lose that much? A. You lose that much.

(Mr. Markell) That's all.

RE-DIRECT EXAMINATION.

By Mr. Tingley:

Q. Do you recall that the only criticism the Company made of People's Counsel Exhibit No. 13 in the valuation case was that the figures were too low? A. I have heard something to that effect, yes sir.

Q. In connection with Exhibit No. 49, you of course weren't concerned with the yield of the securities to the investor, were you? A. No sir, I was figuring on the amount of interest that the utilities would have to pay.

Q. The sole purpose of the exhibit was to show what rate of return the Company was entitled to? A. That is correct.

Q. And in that connection you considered what was important was not the yield to the investor, but the amount paid to the Company? A. That is correct.

(Mr. Tingley) That's all.

(The Chairman) Mr. Sobeloff, have you any questions to ask the witness?

(Mr. Sobeloff) No questions.

(The Chairman) Mr. Clark, have you any questions?

(Mr. Clark) I would like to ask Mr. Nodder one or two questions on depreciation.

CROSS-EXAMINATION (Continued).

By Mr. Clark:

Q. Mr. Nodder, to what extent does the maintenance policy of a company bear on the retirement charges? A. I would say that a well maintained property would have have less retirements than a lesser well maintained prop-

erty. In other words, maintenance to a certain extent arrests retirements.

Q. Doesn't that account very largely in the policy of this Company for the ratio of depreciation charges to depreciable property? A. I believe that this Company, so it claims, has been very well maintained, and if that is a fact then its ratio of depreciation to depreciable property would be much less than perhaps would otherwise be encountered in a less well maintained property.

Q. In other words, the retirement period can be almost indefinitely deferred through a maintenance policy, that is, no postponement at all, an up-to-date maintenance policy, keeping every item of property in thorough condition.

Take for example the car matter that was referred to before noon. You can take a good car and assuming that that car isn't superseded by a more up-to-date car we will say, you can take a good car and repair and replace one part after another and extend the retirement period of that car way off into the future, can't you? A. That is correct, using your expression there if the car doesn't become inadequate. The two main features of depreciation to study are the matter of wear and tear and the matter of obsolescence or inadequacy. As far as the first part, wear and tear, theoretically the life of a car would be indefinite. It could be extended forever.

(Mr. Toole) One hundred and one years?

(The Witness) One hundred or more.

Q. Do you know the extent of the application of the rule that when a job costs less than a thousand dollars it is charged to maintenance? A. I don't know of such a rule?

(Mr. Tingley) That's a company practice.

Q. You don't know the company practice on that, do you? A. No. I am not just definite on that thing.

Q. You don't know whether it is limited to track reconstruction? A. No, I don't. That's my understanding.

(Mr. Tingley) I think it is, isn't it, Mr. Emmons?

(Mr. Emmons) Yes. If we have a large renewal of things such as maintenance, such as ties on open track work, that's purely maintenance, but anything where we have to dig up a certain piece of work that's all in one place that is over a thousand dollars then we take that out of depreciation.

(The Witness) That was my understanding.

Q. Have you had occasion to compare the maintenance charges of this Company with comparable companies? A. I have not.

Q. Have you investigated the maintenance charges of this company with respect to the liberality of those charges? A. Studies have been made as to the not liberality but as to the correctness from an accounting standpoint of a lot of those maintenance charges and have been found correct in general.

RE-CROSS-EXAMINATION.

By Mr. Markell:

Q. Don't you know that the maintenance charges of this Company are low as compared with other companies? A. I believe they are. One of the exhibits in this case the scale was very low on maintenance charges.

Q. So the less you charge for maintenance the more you need for retirement charges, isn't that true? A. If that is on a proportionate basis. The fact that the maintenance may be less compared with another company doesn't necessarily mean that this property is not maintained. The maintenance costs are less than in another city. No two cities are comparable.

Q. You don't differ with Mr. Nash in your view that accounting as between maintenance and depreciation is a twilight zone between them? A. There is a certain twilight zone to speak of.

Q. So the less cost on a maintenance the more would have to go in a retirement reserve? A. That's right.

(Mr. Tingley) The Company has always maintained

that its property was maintained in a high state of condition.

(The Witness) That is correct.

Q. What do you think would be the present value, after being indefinitely maintained, as Mr. Clark suggests, of a first class 1890 horse car? A. It's present condition?

(Mr. Tingley) Is the Company operating any now Mr. Markell?

(The Witness) If it is considered an antique it would be considered very very valuable. From an operating standpoint not very valuable.

(Mr. Clark) But if you were still using it it would have been possible to have maintained it right up to this day.

(Mr. Markell) Of course, if we live in another world. That's the point.

(Mr. Clark) I saw some out here to the Iron Horse, I saw some very old conveyances out there very well maintained.

(Mr. Markell) They were very interesting, but they weren't producing any revenue.

(The Chairman) Mr. Toole, have you any questions?

(Mr. Toole) No sir.

(The Chairman) Senator Benson, have you any questions you wish to ask?

(Mr. Benson) No sir.

(Examination concluded.)

(The Chairman) Mr. Tingley, have you any other witnesses?

(Mr. Tingley) No other witnesses.

(Mr. Benson) I am ready to go ahead, Mr. Chairman.

Thereupon—

JOHN O. BENSON,

a witness of lawful age, produced on behalf of the patrons of the Number 3 car line, having first been duly sworn according to law, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Carville D. Benson:

Q. State your name and residence? A. John Oregon Benson, Halethorpe, Maryland.

Q. John, what is your education and training? A. A public school training, Baltimore Polytechnic, and John Hopkins as mechanical engineer.

Q. What are you doing now? A. Working for the Benson-Link Realty Corporation as General Supervisor and salesman.

Q. Will you explain this exhibit C which I now offer in evidence?

NOTE: Map above referred to is here filed in evidence and marked Halethorpe Exhibit C.

(The Witness) This map is simply a large picture (indicating map hanging on wall). It's not the same as the exhibit. The exhibit is taken from the geological map and this is just a city map which shows the streets, but is enlarged for the purpose so you can see it.

Now that shows in concentric circles from the center of the City outward and the various terminuses, or rather the various ends of the one car fare as we go along. Here is the Catonsville, Ellicott City, Lorraine Cemetery, Woodlawn, Slade Avenue on the Pikesville line, Lakeside, York Road to Towson, there is the Hamilton Avenue that goes out to Taylor Avenue, the Overlea line, here is 45th Street on the Middle River, and we had to extend the map a little bit down here, that's Dundalk Junction, (indicating) and all of those are one fare.

Now this is the Halethorpe Junction at the end of its

two fare distance (indicating). As you see it falls between this zone (indicating) and this one which is between the five and six mile zone, in the same zone as four and two that terminate here (indicating), making six other car lines all of which in this zone are for one fare where we have two.

Now there are four one fare lines in the next zone out, and still one line out beyond that. Now the only line inside of ours is this 45th Street line which was extended to the point that they asked in 1924. It shows the City line on the old City line and the 1924 decision in which it was spoken about the fact that there was no extension to the east. We also said there was no extension to the southwest. You see the extension was out this way due west and due north, so that these folks in this last extension got an extension here of about two miles directly east, which of course to Dundalk Junction means more, and they got a long ride.

Now out our way the extension is just a shade over a mile from the old 1816 boundary. We got no extension in 1888, and we are placed in the same class as the Dundalk-Sparrows Point line, and it shows also the present city line with the car lines which are outside of it.

The Catonsville line is outside, the Lorraine is outside, the Woodlawn is outside, Lakeside, Taylor Avenue, Overlea and Dundalk Junction for the two lines that terminate, or rather the two fares that come out at that point (indicating).

(Mr. Benson) Now I have Exhibit D that I wish to offer in evidence.

NOTE: Blue print above referred to is here filed in evidence and marked, "Halethorpe Exhibit D."

Q. John, have you anything to say in explanation of Exhibit D? A. Exhibit D is the information taken off of Exhibit C and put in a tabular form. All of this is air line mileage from Baltimore and Charles Streets, and you see the lines, No. 3 Halethorpe line, No. 26 comes out to a little over five miles. Then follow that down, No. 23 to 45th Street one fare and falls short of

that by about half a mile. No. 14 goes to North Bend Road on Edmondson Avenue and falls short by an eighth of a mile. Now all of the remaining lines, No. 8, Nunnery Lane, No. 8 city line, Towson, No. 24, Dundalk Junction, No. 26, Dundalk Junction, No. 35 Lorraine Cemetery, No. 28 to Lakeside, No. 32 to Woodlawn, No. 15 to Overlea, No. 19 to Taylor Avenue and No. 5 to Slade Avenue, all of which are one fare lines and extend beyond the end of the Halethorpe line, which is a two fare line.

These mileages are scaled from the Maryland Geological map which is considered the most accurate map that we have use of.

Q. You might tell me who you got these charts up in conjunction with? A. Mr. Britcher of Sutton-Britcher & Co., Engineers, assisted in preparing all of these charts and maps and checking the distances, so I think you will find the distances just about as accurate as you can find them. We haven't found any mistakes. You might find some later, but I doubt it.

(Mr. Benson) I now offer in evidence Exhibit E.

NOTE: Blue print above referred to is here filed in evidence and marked, "Halethorpe Exhibit E."

Q. Will you take Exhibit E and make any comment or explanation about that? A. Exhibit E is still a further tabulation of Exhibit C. It shows the air line distance of the Halethorpe No. 3 line as 5.35; the No. 23, Middle River, is 4.60 miles; No. 14, Ellicott City 5.20; No. 8, Catonsville 5.35; No. 8, Towson 5.65; No. 24 River View 5.8; No. 26, Sparrows Point 5.8; No. 35, Hillsdale 5.9.

Q. You need not read all of those. A. They show the air line distances. The next group of three colmuns is the one fare distance from Baltimore and Charles Street compared with the total Halethorpe line two fare distance. That shows the excess mileage, the per cent. excess and the average per cent. excess.

Q. There are just two of those excesses that show less for one fare than we have for two? A. That's right, sir.

Q. And the general average of all the lines is 12% excess over—— A. Including the deductions for those lines which are less than ours and averaging the whole twelve lines our ride for two fares is 12% less than the average of twelve city lines for one fare.

Q. Tell me why you took the center of Charles and Baltimore Streets in air line for these charts? A. In studying over the 1924 decision in which Sparrows Point was granted an increase——

Q. And the Middle River? A. And Middle River the Commission selected the center of the city in their wording and said it was a discrimination to the section in that part of the city to only be able to ride about three miles from the center of the city for one fare when all the other lines could ride from five to eight miles, and in mentioning all the other lines they forgot us for some reason or other. We are trying to remedy that now.

(The Chairman) I might suggest we were considering the city limits at that time.

(Mr. Benson) It don't seem so, Mr. Commissioner.

(The Witness) You went out of the city limits.

(Mr. Benson) I now offer Exhibit F.

NOTE: Blue print above referred to is here filed in evidence and marked, "Halethorpe Exhibit F."

Q. The Commission also said something about industries down in that section in their decision? A. Yes, sir.

Q. Now will you make any comment you want to make on Exhibit F? A. In looking over the decision of the Commission we found that they had given thought to the fact that in that section of the city the industry was an important part and to get people down there was important to the industries and important to the city, and also that people living in the center of the city might hesitate to move there if they worked in town as far as Patterson Park, or if they lived near Patterson Park it would be two fares to ride out to the various industries, and we made a check of the city of the industries employing more than 100 people, and taking our own car

line, No. 3 car line, we find that we have 53 such industries that are served by that car line before the car reaches Baltimore and Howard Streets, that is, so that these people, if they live in our section, could come in and get off the car before they passed through the center of the city.

Now the same applies to us that applies down to Sparrows Point. We have lots of industries that are very close to us, the stockyards, Miller Safe, Montgomery Ward, and people hestitate to live out our way and pay two fares even though they can save quite a lot of time, and it would be a saving to the car company to get those people into work and collect their fare without carrying them through the whole of the city.

Now this list, I don't know whether it's necessary to read it, I doubt it, but the addresses are Redwood Street, Sharp Street and Camden Street, South Paca, Mt. Clare Shops and Scott Street and West Redwood. All of these streets I have taken as where a man would conveniently get off of a street car and walk a block or so in preference to taking a transfer even if it were available. That is, a convenient walk from this No. 3 car line.

(Mr. Benson) I now offer in evidence Exhibit G.

NOTE: Blue print above referred to is here filed in evidence and marked, "Halethorpe Exhibit G."

Q. Now will you explain this Exhibit G? Let me ask you first where did you get this data of a list of the business enterprises? A. We got this from the Chamber of Commerce. They gave us a list of the larger industries.

Now Exhibit G might have come before Exhibit F because it tells a little more about it. For instance, it divides the city up into four sections. We call the northeastern section as north of Baltimore and east of Charles Street; northwestern as north of Baltimore Street and west of Charles Street; southeastern as south of Baltimore Street and east of Charles Street, and southwestern as south of Baltimore Street and west of Charles Street. Now throwing each of these industries in their proper location, and also figuring the area of that par-

ticular location we find that the northeastern the area in square miles is 25.4 and the per cent. of which that is the total area of Baltimore is 28.1 per cent. Now we find 61 concerns in that district, and figuring a density proposition, dividing the number of concerns by the number of square miles in the area we find that their density is 2.4 concerns per square mile.

The northwestern is a little larger district, 29.1, it's 31.7% of the total area, and it has but 37 concerns, a very sparse manufacturing section, and its density is only 1.3.

Now the southeastern is a large section, it's 25.4, relative to the other three, its per cent. of the total is 27.7, and it has 107 concerns, the largest number of any of the four districts, and its density is 4.2.

Now our district, the southwestern, is the smallest in area of any. It is only 11.6 square miles. The per cent. of total area is 12½. It's less than one-half of any of the others. It's number of concerns is 77, next to the largest, and the number of concerns per square mile is 6.6, giving us the most dense manufacturing section of the city.

Now all of these concerns could be, or a good many of them, if people chose to live in the country, they could live in our direction and get to work easily and quickly and further develop that section.

Now in per cent. of the southeastern, which is the largest section, with 72% of the number of concerns that they have, we have 208% of the northwestern and 126% of the northeastern, and we also figure out from this Exhibit F chart that these 53 concerns, they are 69% of our number of concerns that are located in the southwestern section, and that they are conveniently served by the No. 3 car line or would be if they happened to ride on it.

Q. If they had one fare? A. If they had one fare out there a good many would ride, because I have tried to sell people houses and they say that even though to the Union Stockyards it's two fares, they prefer to live somewhere else where they can get a ride all the way

through the city and bother the trolley car company a little more for one fare.

(Mr. Howard) May I ask what the outer limit of these quadrants is? The inner boundaries are the vertical and horizontal lines through the center?

(The Witness) Yes.

(Mr. Howard) The outer boundary is what?

(The Witness) The city.

(Mr. Howard) Limits?

(The Witness) That is with the list we got went up to Oella and Towson, but we didn't think it was fair to throw in such places and we took the city as being able to check up. Sparrows Point is not in there.

(Mr. Benson) I now offer Exhibit H.

NOTE. Blue print above referred to is here filed in evidence and marked, "Halethorpe Exhibit H."

Q. Have you any explanation to make of this Exhibit H? A. The Exhibit H is further taken from Exhibit C. We took the air line distances and we also in this were governed a little bit by the fact that in 1924 an exhibit was introduced to show the comparative number of miles one rides per dollar. Now we didn't run it up to a dollar. We just take it for a mile and the rate of fare for the twelve city suburban car lines is 7½c, and their average distance air line from the center of the city is six miles, which gives them a ride per mile of a cent and a quarter, or $.0125.

Now the Halethorpe No. 3 line is 5.35 miles and the rate of fare is 15c, and it gives us a rate per mile of $.028.

I have two notes here that show that the 7½c fare is used where the twelve city lines are because 90% of the passengers use tokens, and down below I use the full 15c fare because I am told that 80% of the passengers use all tokens there, they don't use commutation tickets. If the rate were increased to 10c the rate per mile would be $.0167, whereas for the Halethorpe line it would be

$.0374. The average increase for the twelve city suburban car lines per mile is $.0041, less than half a cent, and the No. 3 increase per mile is $.0093, almost a whole cent.

Q. Per mile? A. Per mile.

Q. In other words, the Halethorpe line at present has doubled the fare that any other similar line has and now the proposition is to double the increase? A. That's it.

Q. How long have you been building and selling houses at Halethorpe, John? A. Since May, 1925.

Q. In your first transaction what name did you build under? A. Under the Northwest Halethorpe Corporation. We built on Carville Avenue 18 houses.

Q. Who was associated with you in that? A. My father and myself.

Q. You did all the work on that, didn't you? A. Yes sir, practically all the selling and supervising, buying of material and general foremen of the carpenters, too.

Q. Since then you are interested in the Benson Link Realty Corporation? A. Yes, sir.

Q. How much vacant land has the Benson Link Corporation available for development? A. They have 50 acres up at Leeds and about 15 down at Halethorpe. About 65 acres.

Q. How many houses have the Benson Link Corporation built since they started? When did they start? A. They started to build in 1926. They built 14 at Leeds and 14 at Halethorpe, 28 houses.

Q. How many unsold? A. 10.

Q. How long have they been ready for sale. A. They have ben ready since the late spring.

Q. All of them? A. Not all of them. Some of them are in various stages of construction, but most of them have been ready since late spring or middle summer.

Q. What effect if any has the so-called emergency rate case of the United Railways had upon the sales out in

our community? A. Before the rate case all spring we have been talking to various builders around and they were telling us how dead it was and how hard it was to sell, etc., but we were selling as we went along a few houses, and while it was tight and competition was tight we were still going ahead.

Since July, when the first notice came out about the two fares or the fare being increased to 10c, which would mean two 10c fares to us, we haven't sold any houses at Halethorpe and only one at Leeds, and people simply won't talk to us at all. They say it's too far out. We try to tell them it isn't far out; that our distance compares with all these other distances, but they say it's two fares and the two fares makes it far out. As one lady said to us it's two fares and it's bound to be eight miles and it can't be anything else. Well I showed her it wasn't five to Leeds, but two fares with that short distance they throw us into a class as if we belonged in the outer regions somewhere, and our distance and quickness to get down town doesn't count for anything.

Q. What effect does the two fares have upon the cost of a family at Halethorpe in the maintenance of their family budget as compared with the other locations where they have one car fare with which we are in competition? A. Take any point on any of those twelve lines where the people have one car fare. If there are two in the family on our line it just simply costs twice that ride back and forth, or only take one they have double the car fare, and at the 7½c rate for one person it means $45.00 a year. Now if there are two of them it means $90.00 a year and that would pay their ground rent if they didn't have to pay it for car fare where they can live some other place the same or a longer distance out without that and you see that we have to sell in competition with that, and the houses that we sell are good houses and we have to build a better house for the money all around. The houses that we sell against we don't think are as good as our houses and yet they bring better money and they sell quicker.

Q. Now what have you got to say as to whether or not these other sections, either by the Commission or

by the railroad, have any preference over our community as to car fare rates or as to whether there is any disadvantage suffered by our location? A. There is no question of the fact that when a car line goes out somewhere for one car fare and you can just follow this Map C at any one of these lines where they have one car fare, and you see the tremendous growth of the sections. Now this Dundalk section has grown three or four hundred per cent., or more than that, almost a thousand per cent. of cottages, of people. Some of them work in Sparrows Point and some work in Baltimore, but the fact is they move down in that section because one car fare takes them in Sparrows Point and one gets them to Baltimore and they are the same distance at either end.

Now the railroad also goes out to Dundalk Junction, and it goes out to Halethorpe at the same station, and the base rates are approximately the same on the railroad, and yet the trolley car fare is twice as much to Halethorpe than the other sections farther out.

Now up at Lorraine Cemetery, where our friend Mr. Clark is, that whole hill up there beyond Kernan's Hospital is spotted with houses that before that was taken over there weren't any houses to speak of in that neighborhood. And the Gwynn Oak section, all along passing Gwynn Oak Park and back in those developments there were no houses to speak of. There were houses out to Wayne Avenue where the fare terminated and very scattered beyond that and out.

Q. And there have been several developments at Overlea that have entirely started since they got the one fare? A. Yes, sir. And out Hamilton Avenue beyond Taylor Avenue it's like a new city out that way. During traffic at night going out there you can hardly get along the roads, they are so crowded, and people built back and back and back three or four blocks houses that we would hestitate to build for fear we couldn't sell them, and yet they are selling them out there. They look like they are turned out of a mill, all the same, and we have to compete with that. And those people get as much for their houses as we get for a house that's individually designed and well built.

Q. Designed by a competent architect and built of the best material? A. Yes, sir.

Q. When you speak of Woodlawn you are speaking of outside the city boundary, the development that's occurred since the extension of the car fare? A. Oh yes, that's beyond the city. The original one fare was very close to the present city line, so that all of that development of something over a mile outside of the city is all in the county now and the great majority of the Dundalk Junction is out in the county. The line from where it crosses the city line to Dundalk Junction is over a mile and a half.

(The Chairman) Do you know whether any particular development has taken place down there since the Shipping Board built all those houses down around Dundalk and Dundalk Junction?

(The Witness) Since the Shipping Board built those houses, and they have been absorbed by people living there, there has been built at Dundalk 120 some houses in Dundalk proper.

Q. Since what year? A. Since the one car fare was down there, and St. Helena has had 60 new houses, Graceland Park that is down in that section 60, Lorraine Park 40 and Milburn Heights has 15, and Hudson Heights has 20 and Colgate Park has 25, and before that time there were practically no houses there except the Shipping Board houses, and these people go back and forth both ways. If a man works at Sparrows Point it doesn't necessarily mean his whole family works there. The family can come to the city or the man himself for one fare a distance which is a little greater than the distance to Halethorpe, and also a distance out in the county which is as far as the Halethorpe distance out in the county.

Q. John, if you can point out on that map, point out about where the Union Stockyards are? A. The Union Stockyards are right along in here (indicating), where the old city line ran along this river (indicating) and this is Carroll Park, where the golf course is now close to Gwynn's Falls.

Q. Now point out where Oaklee Station is? A. Right here (indicating).

(The Chairman) Right on the line?

(The Witness) No, it's about 300 feet out in the county.

Q. Now at Oaklee, aren't there quite a number of butchers and who live right at that location? A. There is quite a settlement there of butchers. The Kaufman's, who have a meat market, have quite a little section there and there is a tremendous growth at that one fare.

(Commissioner Harper) Is that at Leeds Avenue?

(The Witness) Yes sir, between Leeds and Wilkins Avenue, called Ridgwood, and they are developing up to Kensington now which brings them about in the one fare, and then it is sparse until you get to Arbutus and Halethorpe.

Q. Now point out where Maidens Choice Lane is on the Benson Link, Leeds property? A. Right here (indicating).

Q. How far is that from Oaklee Station? A. About half a mile. I think it's four-tenths of a mile by the speedometer from Oaklee Station.

Q. Now we have how many people that we have sold there? A. We have people living in ten houses.

Q. Now those people walk, don't they, to Oaklee Station? Most of them? A. Most of them walk and people walk from further than that. People that walk completely by our place from Arbutus up, and they walk around from that direction and over to Morrell Park, this section here (indicating), they walk across there so that it wouldn't be any increase to the United to get those people, to extend, because they wouldn't lose anything, because the people get on there any way and that has all grown since the one fare.

Q. When did that development at Oaklee Station, not the Kaufman's own property, but the other development start? That was since the one fare started? A. Yes sir.

Q. What is the name of that? A. Ridgwood.

Q. And that started since the one car fare went into effect? A. Yes sir.

Q. Now, John, can you give any idea, I don't suppose you kept a record of it, but can you give any idea of the number of people who liked your houses and liked the location, but would not buy because of the two car fares? A. It would be pretty hard to say because we didn't keep an absolute record of it, but going to see people, people that have seen the houses and people that haven't seen the houses, more than half of them object to Halethorpe before I would say two words. They would say Halethorpe; they would live anywhere on earth than Halethorpe. Why? Because it's so far. Why it isn't so far. Well you can't tell me because I know it's two fares, and the sum and substance of it is that this little distance out here (indicating), and it would be an advantage to the United to let these people ride, because if it were one fare out there it's less than the average of all of the rest of these (indicating). It wouldn't set any criterion or any principle whereby they would have to extend anybody else out, and we would serve a big manufacturing section down here (indicating), and we also have a potential manufacturing section which will grow up on the B. & O. grounds which the B. & O. is planning to operate and have sold some but they haven't turned it all loose because they haven't got their plans perfected, but when they put the Iron Horse out there they put water in and they didn't put temporary water in, they put 6 inch main in, and they put T's at places where they figured on putting streets, and they have told us that that is going to be a purely commercial factory development, and they have sold part of it already, but they are not ready to testify to that and they are not ready to say because they don't know exactly what they are going to do with it.

Now we would be in a situation just like the people at Dundalk where the car would feed in both directions. One fare to Halethorpe from these factories out here, Halethorpe people going to town on the inbound trip and factory people going out on the same car, giving

them two directions, whereas practically none of these north or northeastern or northwestern sections carry but in one direction, and if we don't get this thing this time goodness knows we will never get it, and we have got to do our best to show the United that they haven't anything to lose. The United has a whole lot to win by developing this section. As you can see in the 1816 boundary (indicating), the eastern part didn't want to come in, because it was commercial, and neither did the southern part, this one continuous block of ground and one continuous section (indicating). The railroads all came in and went through this part (indicating). The little Northern Central is not a commercial road except for coal and there is practically no manufacturing up there except a cotton duck along the valley, and it's a discrimination that we are not entitled to. It isn't like we were way, way out somewhere that it cost more to operate. It certainly costs so much a car mile to run a car mile, and here we are in the same district with those other terminuses, and we have to pay twice as much, four others further out than we have to pay, we have to pay twice as much as they do, and one fellow still further out, we still have to pay twice as much as he does, and he has twice as much ride as we have.

EXAMINATION SUSPENDED.

(Mr. Tingley) If the Commission please, before closing our case, I would like to ask that all protests be made a part of this case.

NOTE: At 4.30 o'clock, P. M., the Commission then adjourned until Wednesday, November 23rd, 1927, at 10.00 o'clock, A. M.

THIRTEENTH DAY.

Thereupon—

JOHN O. BENSON,

a witness of lawful age, produced on behalf of the Patrons of the No. 3 Car line, having heretofore been duly sworn, according to law, and whose examination was suspended for the purpose of adjournment, resumed the stand, was examined and testified as follows:

DIRECT EXAMINATION (Continued).

By Mr. Carville D. Benson:

Q. John, how did you come to adopt the air-line measurement from the center of the City to Halethorpe as a basis of the exhibits you filed here? A. In the preliminary case we filed two exhibits, A and B, that related to the actual route mileage of these actual lines, and since then, in studying up on these back cases, this 1924 case, we find that the Commission has taken the center of the city as the measure of the distance.

Now the only way you can take the center of the city and measure to the other places is airline, because the lines don't go to the center of the city, therefore we took the center of the city and developed these exhibits on that and of course there was an exhibit filed by the Sparrows Point people, I think Mr. Pettit, exhibit No. 1 that gave an airline proposition on mileage and we just simply followed that out to all the facts that we have got now.

Q. Would you read into the record what the Commission said with reference to the Middle River lines and and the Dundalk lines and the city extensions? A. On page 9 of the Public Service Commission opinion, case No. 1682, it says:

EXTENSION OF ZONES

"Applications have been for the extension of zones on all the lines operating in the city to the new city limits." These applications include:

"River View lines to be extended from 15th Street and Eastern Avenue to Dundalk Junction."

Which incidentally is out into the county.

Q. How far? A. About half a mile.

Q. Dundalk Junction is over half a mile? A. From River View.

Q. Oh, yes. A. (Reading) "This would include the Canton Section and the River View, St. Helena and Dundalk section in the city zone."

That is, these places that are in the county would be thrown into the city zone.

"The Sparrows Point and Bay Shore line patrons request that the City zone be extended from 15th St. and Eastern Avenue to Dundalk Junction, the same point where it is desired to extend the River View Line."

Which, of course, takes in all those places which are out in the county, and that distance beyond the City line is one mile and six-tenths, 1.59 is the figure, we have from the United.

"The Back River and Middle River line patrons request that this line be extended from Fifteenth Street and Eastern Avenue to the City limits. It has further been requested that the second zone be extended to Mace Avenue, so as to take in the community of Essex, and also to wipe out the third zone entirely.

"It has been requested that the one-fare zone on the Harford Avenue line be extended from Hamilton to the City Line."

And further on page 12 it speaks of these extensions and it says:

"That this is and has been considered by the Commission a desirable thing to do."

That is, to extend these lines equally and it says:

"It has been the policy of the Commission to extend the zones as rapidly as possible in order to wipe out inequality in the length of the ride."

And it doesn't necessarily say cross the city line, or from the city, because in the case of the Sparrows Point they go some considerable distance out.

It says: "The grossest inequality which exists, however, is in connecton with the three car lines going to River View, Sparrows Point, and Back and Middle Rivers. The length of the ride from the center of the City to the end of the first zone on these three lines is three miles."

And from or maps we figure that's airline measurement.

"The length of the ride on the Belair Road, Harford Road, York Road, Roland Park, Mt. Washington, Pikesville, Gwynn Oak, Hillsdale, Edmondson Avenue and the Frederick Road or Catonsville Line, is in each case over five miles from the center of the City."

And they have mentioned all of the lines that we have used in our exhibit except our own.

And then it speaks of the Curtis Bay transfer, if that's eliminated, that brings up to the five-mile limit, so that taking from the center of the City and assuming that about five miles is about air line, the Commission recommends the extension to Dundalk Junction of a distance, I presume, into the County, a distance of 1.59 miles on the Sparrows Point and over half a mile on the River View line. It said:

"This situation is brought about by the fact that at the time of the annexation of 1888, the Highlandtown and Canton district refused to come into the City. When the fare limits were extended to the old City limits by the annexation act, this district got no fare zone extension benefits. For six years now this eastern section has been within the City limits.... * * *"

Well, they also take in the Sparrows Point and Dundalk which is without the city limits.

* * *"and in the Canton district there are tracts of land available for industries with excellent railroad connections and water facilities."

And we tell the Commission the same thing, that we have land with railroad connections. We don't happen to have the water facilities, but we have the two railroads that go right thru that property that the B. & O. is planning to develop:

"It has been stated to the Commission that industries hesitate and in some instances refer to settle in this district, because the employees of the plans would be compelled to pay two carfares to get to and from their work, altho the ride would not exceed two miles from those living in the neighborhood of Patterson Park."

Which we tried to show by our exhibits as to the number of factories, etc., that if there were one fare these folks would live in our district and wouldn't be discriminated against to the extent of living way over on the other side of town somewhere and taking a very much longer rider to get to their work.

Q. John, incidentally all that northwest section from McCulloh Street to Mount has been taken over by the colored people, hasn't it? A. Practically, yes. Everything in the western section we consider as going in that colored trend, practically from Baltimore Street to North Ave. We figure it will probably stop at the Pennsylvania R. R. It will be sometime before it jumps. We don't think Fulton Avenue is going to stop it, altho some people on Fulton Avenue do.

Q. And quite a number of those people who have been driven out of the communities have come to our section already. What did you find out in your investigation and solicitation of those people that had to move? A. Whenever we find a district changing or a street changing, and we keep pretty close track on them, so that we get that almost as soon as our friends the colored folks do, we solicit every house to get a verdict from the people and we sell some of them, but the majority of them, even tho they have been living in the Western Section of the city from choice won't go out into our section for two fares, but will go east and in other directions out on the one fare line.

Q What effect if any has the large cars had on the

development of our section, and direct routing down town? A. The large cars were put into effect in December of last year, and taking the figures running month by month, up to December they run 2500, 2300, 2500, 2500, 2700, 2400, 2400, 2500, 2500, which is November and December which is the first month of the big cars it becomes 3400, and then following down 1927, it's 3300, 2945, that's a little low, 3300, 3300, 3300, 3400, 3200.

(Mr. Howard) Those are the figures at Halethorpe of what?

(The Witness) That's just the second fare, Halethorpe collection, gross. Now for September and October, I have larger figures on account of the Fair of the Iron Horse. That becomes 4300 and 5000.

(The Chairman) You mean these are the figures of the amounts paid by passengers on that road?

(The Witness) Yes, sir.

(Mr. Howard) Second fare zone?

(The Witness) Second fare zone.

Q. Where did you get those figures, John? A. We got those figures from the United. The United has been very courteous and kind and given us all the information in any direction, and I just got these figures this morning from them. We wanted to check up the total gross for the year, but in doing that we got this other word too, and taking the Iron Horse is a little above the average and estimating for the last two months, 3400 and 3500 which is in form with what goes on as Mr. Samuel Emmons said that December would probably be a little heavier on account of Christmas.

Now it gives a total for 1926 with one month of big fares as 3100 and it gives a total for 1927 of 43,700. If we take off 2500 for the Iron Horse, it's 40,000 and take now a thousand in December, 1926. It's practically a 33 and a third increase over 1926, when all of the other lines of the city were going back.

Now in one month, it wouldn't be possible to build or get enough people out there to increase the riding by

$900 in a month, there wouldn't be that many new people. It just goes to show that the people are willing to ride. The people are there. They didn't put up with the one-man car because in some cases that car actually made some people sick. The one-man trolley was bumpy and everything and then the transfer too. You see this gives us a straight down town without a transfer which, of course, is quite an inducement, so you see that a 33% increase against the city's decrease and the city's decrease has this increase to help pull it up in the other direction, and figuring the total, the loss to the United at say $40,000 a year, if we count this, showing how quickly we have built up with a little encouragement in the way of getting away with a transfer and good cars we have built up 33 1-3% immediately that we will build up enough to repay back this loss of $40,000.

Now this loss of $40,000, it's a whole lot out of any one man's pocket, but to figure how that checks up with the United. In 1924 the United's actual figures of loss due to the extension on all of their lines, including the Sparrows Point line, was $585,000. Figuring at the rate the United does of one cent increase in fare means an increase in gross revenue of about $4,000,000. That is one-eighth of one cent increase.

(The Chairman) That figure is wrong, isn't it, Mr. Benson?

(The Witness) Which one is that?

(The Chairman) One cent increase in fare means something like $2,000,000.

(The Witness) Then I will have to divide by two as I go along. Then that would become one-fourth of a cent, so that the United got at that time one-half cent increase, of which one-quarter was turned back, they realized in this one-quarter cent increase in 1924.

Now the Sparrows Point line was 289 and some 600 dollars of which that would be one-seventh of one cent and Halethorpe taking the 40,000 as we subtract the Iron Horse from it, as we won't expect that to figure in, comes to one-fiftieth of one cent and that is spread over the city as it should be, and in equity that's against us, a discrim-

ination against us. The people of the whole city shouldn't benefit at our expense on this small $40,000. Now, one-fiftieth of one cent is two trading stamps, one-fifth of a mill, that's how much it amounts to by the United say that any increase or even if the United doesn't get an increase, that isn't any great amount compared with the Sparrows Point line of practically $290,000.

Now Mr. Markell said that while that was all right about the Sparrows Point line because that was a paying line, and I have been thinking about that ever since, what Mr. Markell meant by that. Why if something is making money and making $290,000 a year, why it doesn't make any difference to cut that $290,000 of and the poor little people out our way are only making the Company $40,000.

Q. Gross? A. Gross and they say it isn't a paying line. We will tack it on to them. Now how they can give us $290,000 and gag at giving up $40,000.

Q. Gross. A. Gross, yes. Both of them are gross. I just can't figure Mr. Markell's figuring that way. Probably Mr. Markell has it figured out all right.

(Mr. Markell) Mr. Howard says the misunderstanding is mutual.

(The Witness) Don't you agree with me, Mr. Howard?

(Mr. Howard) No, I don't.

(Mr. Benson) I would like to offer this exhibit to be marked Exhibit I.

NOTE: Statement above referred to is here filed in evidence and marked Halethorpe Exhibit I.

(The Witness) This is to show the 7½c rate on all 12 city car lines as against the 15c rate on the Halethorpe line. The 7½c for one person makes a difference of $45.00 a year, which would make a difference of $60.00 a year at the ten cent rate and if two people in the family rode at even the 7½c rate that makes $90.00 a year, or a difference equal to capital investment of $1500.00, or a normal ground rent. I said that yesterday, but I merely put it in this form.

Q. John, Mr. Emmons and the Commission themselves have several times referred to the City boundary. I want to ask you whether when they were extending the Harford Road line, even tho there is one fare left beyond, whether they didn't extend that half mile beyond the city boundary to take care of the Taylor Avenue section? A. Yes, that's so, they go out to Taylor Avenue, which is some little distance beyond the actual city lines at that point. That is Taylor Avenue is the center of what was a little section out there before and they went out there to take up that section, the same as going to Dundalk, they go beyond the city line to take up the section of Dundalk, and St. Helena, regardless of whether it's in or out of the county.

Q. How far did the extension on the Halethorpe line extend beyond the City line? A.This last extension?

Q. Yes. A. In 1922 or '24 when that was extended they go 300 feet out, and the only reason they went 300 feet out was because that was the distance from the nearest road.

Now a good many other extensions that don't amount to half a mile the City mile, might be just one block, a perfectly legitimate place to stop, but if you are going to say the City line is the absolute limit and they have gone one, two, three or four blocks beyond that for reasons best known to themselves, and in some cases a mile and in the Sparrows Point case a mile and six-tenths—

(The Chairman) Beyond the City limits?

(The Witness) Beyond the City limits.

Q. How about Woodlawn? A. Woodlawn is a mile beyond the City limits. The Sparrows Point distance, the total distance to Dundalk junction is less than to Halethorpe and the Sparrows Point mile in the city is half a mile more than the Halethorpe ride to the one fare, and then on top of that they get an extension into the county, which is almost as long as the Halethorpe extension.

Q. What difference is there, there? A. The difference is about a quarter of a mile between the two. The two cases are so near alike, and every thing that refers to one refers to the other case. The City extension refers to the

southwest. In this discrimination, the Commission says that the Southeastern section is discriminated against, and also gave the car lines, but it says against the northeastern, the northern, the northwestern and western, all of those discriminated against, but it don't say anything about the southwestern. We are the southwestern. The two cases are alike and we say that we should be placed in the same boat as the people at Dundalk Junction, a quarter of mile less total haul, half a mile less haul in the city and only a quarter of a mile more in the county.

Q. Now you say Halethorpe? A. I mean the two-fare distance to Halethorpe as compared with the present one-fare distance to Dundalk Junction.

Q. Is more or less? A. Halethorpe is one-quarter of a mile less than the distance to Dundalk Junction.

(The Chairman) How far further into the county?

(The Witness) About a quarter of a mile, not over a quarter of a mile, and the same industrial conditions hold. We have a big potential growth out there, in a thousand scores that's being held for industrial purposes only. A. Are there any other lines that extend out into the county? A. This red line (indicating on map on wall) is the present county line and these big dots are the one fare terminuses, which the exception of this one, which is the Halethorpe two fare. Now this Frederick Road line is Nunnery Lane. Now Nunnery Lane has some three or four blocks beyond. It's quite a discrimination to even go one or two blocks when it goes to back up a section which is competing against another section that doesn't have it. And Lorraine Cemetery, practically all the growth out in the Lorraine Cemetery Section since this fare has been out in the county, the Kernan Home for Children practically takes up all of the north side of the trolley car tracks as you come out and on the south side of the avenue, before you hit the county, there are a bunch of old houses along that line that take up practically the whole road with no room in there for avenues. There is land back of it to develop which you would have to go thru to get some of those.

Now Woodlawn is a mile out. Lakeside is out. Har-

ford Road is out to the center of population there, Taylor Avenue. Overlea has been there, of course, for some time and this one goes out and takes up St. Helena and Dundalk and goes within a quarter of mile as far out as we are from the city line, and as far as that was concerned, if that quarter of a mile would gag the Company we would be willing to have them stop a quarter of mile short if that's the limit. But, of course, that wouldn't make much difference one way or another. We say why should we pay two fares when all of these fellows that we are competing with, and its strong competition, we have to buck them all the time with one fare and as I showed in the exhibit about the big cars, when we get a little chance to come back, we show a very decided improvement. I don't imagine the United expected that 33% increase of growth when they put on the big cars. Did you, Mr. Emmons?

(Mr. Emmons) We had a double expense pretty near putting on the big cars. I don't think the growth helped us any.

Q. How about the development of Woodlawn, since the extension of that line? A. All of these sections, whether it's Woodlawn, Lorraine or out here on the one fare, Hamilton Avenue, they have all grown tremendously since, and out in our section around the end of the present one fare it's practically built solid, along a radius of half a mile. Kensington over on the other side of Wilkens Avenue, the nearest point, is half a mile from the present car stop. They are building back still a further half mile in two directions, so the people want to live in this section, but they can't afford to pay the two fares, and it's a short haul. It's much shorter than any of these others, and this industrial section will get fed from this side.

Q. Now John, the only difference between the situation at Dundalk and Halethorpe is that Halethorpe has a quarter of mile more in the county than Dundalk has? A. Yes, sir.

Q. And it has a half mile less in the City? A. That's right. The end is a quarter of mile less total.

Q. Yes, a quarter of mile less total to Halethorpe? A. Yes, sir.

(Mr. Benson) If the Commission please, I would like to offer this as Exhibit J. It's a map that I got from the Chamber of Commerce of Portland, Oregon. The purpose of introducing it is to show that in a very important case that went to the United States Supreme Court that all of the measurements were taken from airline from a junction that is within one-third of a mile from the center of the city as shown by this map. We have traced on the map in heavy blue pencil the various routes that are mentioned in that decision which will be used hereafter.

NOTE: Map above referred to is here filed in evidence and marked Halethorpe, Exhibit J.

Q. John, what class of citizens are living at Halethorpe? Are they rich people or people of moderate means? A. The people that live out at Halethorpe are working people that have to work for their living.

They are of moderate means, they are not the poorest people in the world, and they get along as well as most people get along in their circumstances, and the thing that we run into of people that would like to come in that direction is the two carfares. They like Halethorpe and like the houses that we build, I am a salesman again, Mr. Commissioner, but they can't see the two carfares. They say there are four people in the family that work and even tho some of them work in the immediate neighborhood we have people that work at Miller Safe or at the Stock Yards that refuse to come out our way, even tho they like the houses and like the neighborhood, and I like all the facilities that we have out there, but they can't see the extra fare. As I say if there are two people in family that work, that means practically their ground rent a year.

Q. $90.00 a year excess? A. $90.00 a year excess at the present 7½c, which would be $120.00 at the increase.

(Mr. Toole) And if there were four they would pay twice as much?

(The Witness) Four people pay twice as much.

(Mr. Toole) And weren't there some houses that have four in the family that work?

(The Witness) Two is nominal.

(Mr. Toole) Would it be a stretch of imagination to make it three?

(The Witness) I will agree with you, Mr. Toole, in anything you say.

(Mr. Toole) I want to know. About how many people work, if you know, in a house in your neighborhood?

(The Witness) We have sold quite a few houses to people in which the husband and wife both work. Now that's two. In that case they usually don't have more than two, because they don't have any family that is growing. Those are young people that are starting out. We have other families, big families in which several boys work and the father works.

(Mr. Toole) You have some girls work too, don't you?

(The Witness) And there are some families that have four.

(Mr. Benson) That's all unless you have something else.

(The Witness) No, only I want to thank the United for being so courteous. But they are getting ready to jump me now, but it will be all right.

(Mr. Howard) We will go one step further and waive cross-examination.

(The Witness) Thank you, again, gentlemen.

NOTE: No cross-examination.

(Examination concluded.)

(Mr. Sobeloff) If I may at this time I would like to offer in evidence the protests of about 5000 individuals and civic bodies addressed to Mayor William F. Broening, protesting against any increase in fare.

While I realize, of course, that the question of the fare cannot be predicated altogether on public opinion, as re-

flected in these protests, I do think that is a legitimate factor to be considered by the Public Service Commission, because while this Commission can regulate the fare paid by each rider, it can't order people to ride, who consider the fare excessive.

(Mr. Markell) You mean their willingness to pay.

(Mr. Sobeloff) Their willingness to pay will have some bearing on the number of riders.

Thereupon—

HOWARD J. GEYER,

a witness of lawful age, produced on behalf of the patrons of the No. 3 carline, having first been duly sworn according to law, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Benson:

Q. Mr. Geyer, what is your name? A. Howard J. Geyer.

Q. What is your business? A. Contractor. Superintendent of Minter Homes Corporation.

Q. Where do you reside? A. I live in Ridgwood, that's just the other side of Violetville.

Q. Near the end of the first carfare on the Halethorpe line? A. Yes, sir.

Q. Where did you previously live? A. Halethorpe.

Q. You used to build some at Halethorpe, didn't you? A. Yes, sir.

Q. How many years ago was that? A. That's been about five years.

Q. When you were building at Halethorpe, did you have charge of the building and selling both? A. Yes, sir.

Q. Who were you building for at that time? A. Mr. Oregon Benson, sir.

Q. My father? A. Yes, sir.

Q. When you went there five years ago, where did you go with your principle operations? A. We started in Sparrows Point.

Q. Who were you building for down there? A. The Bethlehem Steel Corporation.

Q. Where did you build down there? A. We built the first year right in Sparrows Point.

Q. Yes. And where did you build the second year? A. Then we moved to Dundalk.

Q. Have you done much building down around Dundalk? A. Yes, sir. Quite a few houses been built in that section.

Q. Have you as Superintendent of this Company that you represented done much building? A. Yes, sir.

Q. Now will you tell me the condition with reference to building at Dundalk and between Dundalk and what was the end of the first carfare when you went down there? When you went down there the end of the first carfare was 15th Street, wasn't it? A. Yes, sir.

Q. Will you tell me the condition prior to that time and what has been the condition since that time? A. Prior to 1923 there was very little building from 15th Street to the Dundalk Junction. I would say there would be approximately 15 or 20 houses.

Q. A year? A. Between those two periods, 1922 and 1923. I wouldn't say positive about that, because they are kind of scattered all thru the territory, and it would be mighty hard to tell, but from 1924 to the present time, from the end of 15th street to Dundalk Junction, there are 580 some houses been built and several new developments opened up. I have a list of each one of those developments here.

Q. Does this chart represent that situation? A. Yes, sir.

(Mr. Benson) I would like to introduce this as Ex. K.

NOTE: Blue print chart above referred to here filed in evidence and marked Halethorpe Ex. K.

Q. How will you explain that? A. On 18th, 19th and 20th Streets, from 1924 to the present time, the Milburn Realty Company have built 75 homes.

Q. Is that the Company you represent? A. No, sir, that's another concern. On 25th, 26th and 27th Streets on Eastern Avenue the Frank Novak Company has built 150 homes.

On O'Donnell Street, Milburn Heights built 16 homes, that's an entirely new development just opened up within the last year and a half.

Norwood Park is a new development just been opened up in the last two years, they built 12 houses.

Lorraine Park, near the carline, they built 40 houses. Fairlawn at Camp Holibird built 27 houses. Graceland Park 60. Hudson Heights near the carline 80. Dundalk on the car line 116 houses. Colgate Park 25. St. Helena 60. That's about as near as I can get to it.

Q. Those were all built since the one carfare out there?

A. Yes, sir.

Q. How you had charge of the selling at Halethorpe. Tell me what the conditon of the selling was at Dundalk when you first went down there before the carfare was reduced as compared with Halethorpe? A. Of course, before the carfare was reduced in Dundalk it was practically even hard to talk about selling a house in that neighborhood.

Q. How did it compare with Halethorpe when they both had the same fare? A. About the same.

Q. How has it been since the one fare? A. It's been much easier to sell property on the one fare, because the people are moving out of the section where the foreigners live in the eastern section, and they are coming out in the suburbs, it makes it much easier.

(Mr. Benson) That's all, Mr. Geyer.

(Mr. Howard) No cross-examination.

NOTE: No cross-examination.

(Examination concluded.)

Thereupon—

CHRISTOPHER R. WATTENSCHEIDT,

a witness of lawful age, produced on behalf of the Patrons of the No. 3 car line, having been duly sworn, according to law, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Benson:

Q. Mr. Wattenscheidt, you are a member of the Bar? A. I am, yes, sir.

Q. Also interested in real estate? A. I have several developments that I own in and around Baltimore, one at Arbutus of 34 acres that I have had for about 12 years.

Q. Have you some other developments? A. I have one at Joppa, one at Middle River, and one at Stoney Creek, Anne Arundel County.

Q. You also represent a number of building associations, don't you? A. Yes, I rather specialize in real estate finance.

Q. How far is the property that you own on the Halethorpe line from the center of the City? A. I think it's somewhat short of five miles, Senator. To be specific I am at the intersection of Sulphur Spring Road and the Pennsylvania R. R.

Q. You have heard the testimony of my son this morning? A. In part, yes, sir.

Q. You heard it this morning? A. I heard his testimony this morning.

Q. You have examined this map, the exhibit hanging on the wall in back of you? A. I saw one of the charts.

Q. Now what have you got to say with reference to

the effect of two car fares on a community like Halethorpe that's five and three-eighths miles from the center of the city as compared with other like communities lying all around the city, that are as far or further from the center of the city? What effect does that have on Halethorpe? A. It clearly discriminates against that section. There are other sections in various outlying portions of Baltimore City and in the annex and the county which give a very much longer trip for a single fare than happens to be the case with the Arbutus and Halethorpe lines.

Q. Longer in most cases than we get for two fares? A. Precisely.

(Mr. Benson) That's all.

(Mr. Howard) No cross-examination.

NOTE: No cross-examination.

(Examination concluded.)

Thereupon—

G. JUDD STEVENS,

a witness of lawful age, produced on behalf of the Patrons of the No. 3 car line, having first been duly sworn, according to law, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Benson:

Q. Mr. Stevens, what is your business? A. Real estate broker.

Q. How long have you been a real estate broker? A. About 20 years.

Q. Do you sell houses in and around Baltimore? A. Yes, sir.

Q. Specialize in selling dwelling houses, don't you? A. Yes, sir.

Q. You have been selling for whom around Catonsville and other places? A. M. Filmore Corter.

Q. You have been selling also some for the Benson Link Company recently? A. Yes, sir.

Q. And you conduct a general brokerage business in addition? A. Yes, sir.

Q. Are you familiar with the neighborhood lying around Baltimore that have one carfare that lie out in the county? A. Yes, sir.

Q. Are you familiar with the property at Leeds and Halethorpe? A. Yes, sir.

Q. What effect, if any, has Halethorpe, having the two carfares as compared with these other sections upon the development and sale of property at Halethorpe? A. I have found out from selling the cottages at Leeds and Halethorpe in the last year or 18 months that I missed many a sale on account of the two car fares. In several instances there were more than one that had to go to work every day and they considered the two car fares was too heavy an item. We have a very fine house at Halethorpe and Leeds, and the people come there and they realize it, but when it comes to the two car fares, they say well I don't think we can buy here. It's been a handicap right straight thru in selling the property.

Q. You are not employed by the Benson Link Company? A. No, sir, only on a commission basis.

(Mr. Benson) That's all.

(No cross-examination.)

(Examination concluded.)

Thereupon—

EMORY A. KELBAUGH,

a witness of lawful age, produced on behalf of the Patrons of the No. 3 car line, having first been duly sworn, according to law, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Benson:

Q. Mr. Kelbaugh, where do you reside? A. Harmon Station, Anne Arundel County.

Q. You are a contractor and builder? A. Yes, sir.

Q. Also been building some houses in conjunction with Mr. Rittenhouse for sale in the last several years? A. Yes, sir.

Q. Where have you been building those houses? A. North Halethorpe, running from Sulphur Springs south to the Benson Link property.

Q. Really you begin at Arbutus and run south to the dividing line between Arbutus and Halethorpe. A. Yes, sir.

Q. How many houses have you built there in the last three or four years? A. About 50.

Q. Have you had any vacant land offered you recently at Halethorpe? A. Yes, sir.

Q. Was the price too high? When was it offered to you? A. In the last six months. I wouldn't consider it too high ordinarily.

Q. What have you found the effect of two car fares to Halethorpe? A. Our building, we have had a strategic position, we have been immediately on the car line which helped some, I wouldn't buy any ground any distance from the car line, not on two fares, but some few people are being willing to pay for being close up, but I don't see any chance in developing half a mile from the car line as they do in the northern section on Bel Air and Harford Road. The people won't go to a little inconvenience and pay two car fares.

Q. What effect, if any, has been the agitation of two ten cent fares to Halethorpe? A. I can hardly answer that because I don't come in direct contact with the people. Mr. Rittenhouse does the selling.

Q. Have you done much selling since then? A. No, sir, one house.

Q. What are you doing in regard to building now? A. Very little.

Q. Well you are closing down, aren't you? A. Practically.

Q. Didn't you make some investigation as to commutation rates on the W. B. & A. with reference to a piece of property you were looking at down there? A. I did that. I got the fare to Ferndale, because I used to own Ferndale, one section of it and that's down in the county.

Q. Further out than Halethorpe? A. Oh yes, and I found you could buy a commutation for $5.70 for a month.

Q. That's all.

NOTE: No cross-examination.

(Examination concluded.)

Thereupon—

OREGON R. BENSON, JR.,

a witness of lawful age, produced on behalf of the Patrons of the No. 3 car line, having first been duly sworn, according to law, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Benson:

Orry, what is your business? A. Real estate.

Q. You are a real estate broker, too, aren't you? A. Yes, sir.

Q. How long have you been in the real estate business? A. About 12 or 13 years.

Q. Where do you live now? A. Sudbrook Park.

Q. You used to live at Halethorpe? A. Yes, sir.

Q. Have you any property around Halethorpe? A. Yes, sir.

Q. Quite considerable, haven't you? A. Yes, sir.

Q. Do you know the outlying sections of that part of Baltimore where they have one car fare out in the county? A. Fairly well.

Q. Tell me what you know? A. I know the conditions of the car line.

Q. What's the condition out at Overlea? A. They have a one fare out there to Overlea and Hamilton, and they have a one fare out to Slade Avenue on the Pikesville line.

Q. Now what is the condition of the development, as a result of one fare, if you know it on any of those lines? A. The condition of the development on the one fare is wonderful compared with the two fares. The houses are built in rows, they may be separated in a suburban development, but there are many built in rows, and it is practically a solid development and they are actively engaged in construction work, and where the two fare lines are it's a scattered development.

Q. What have you got to say as to the effect on real estate values by giving to one community the same or less distance from the center of the city, two fares and giving to the other communities one fare? A. Well, where they have the one fare, they not only are able to get a better price, but there is a better demand for the property, and it can be sold, where many times on the two fare line they would have to sell it at a sacrifice.

(Mr. Benson) That's all.

(No cross-examination.)

(Examination concluded.)

Thereupon—

ROBERT THOMAS ALINSON,

a witness of lawful age, produced on behalf of the Patrons of the No. 3 car line, having first been duly sworn, according to law, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Benson:

Q. Mr. Alinson, what is your business? A. The manufacture of concrete units and the distribution of building material to dealers.

Q. With what firm or corporation, are you associated with? A. Maryland Concrete Asso. at Halethorpe. At Halethorpe one plant.

Q. Where is your other plant? A. H and O'Donnell Street, ten.

Q. Mr. Alinson, what have you got to say as to the effect of two car fares upon Halethorpe, and also as to the effect of the threat of two ten cent fares to Halethorpe? A. There have ever been any question, so far as our book accounts show that since the agitation for two fares on the part of the United Railways, building has materially lessened, to such an extent that we find our investment way in excess of what it should be for the amount of business we are doing.

(Mr. Howard) You mean agitation for two fares, don't you?

(The Witness) Yes, two ten cent fares. We are certainly in a position to know because we are doing business with practically every man that took this stand to testify. We sell them their material and they are out to sell their houses, and we are well in position to know that since this agitation started for two fares that business is almost at a standstill; that these gentlemen are not doing anything. They have all sorts of property out there, and we are practically idle. People want to come out there but they are reluctant, because they don't know what this decision is going to be.

Q. Now prior to the agitation there was a pretty steady development, was there not? A. It was fair enough, Senator, but I don't think anywhere near what it would be if there was one fare, but it was fairly gradual considering the two fares, prior to this agitation for an increased 10 cent fare.

(Mr. Benson) That's all.

(No cross-examination.)

(Examination concluded.)

Thereupon—

JOSHUA S. HULL,

a witness of lawful age, produced on behalf of the Patrons of the No. 3 car line, having first been duly sworn, according to law, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Benson:

Q. Mr. Hull, you are a member of the bar? A. Yes, sir.

Q. Also in the real estate business, aren't you? A. Yes, sir.

Q. Your father was in the real estate business before you, wasn't he? A. Yes, sir.

Q. You have been doing business not only at Halethorpe, but in other sections, haven't you? A. Yes, sir, been developing at Halethorpe and round Roland Park.

Q. You have a development just east of Halethorpe, just now? A. I have about 160 acres there running from Washington Boulevard to the B. & O. R. R.

Q. Down where the Iron Horse was held? A. Near where the exhibition was.

Q. What effect has two car fares on this community out there? A. The two car fares have been a great drawback to the development of Halethorpe. I have handled, not only my own, but have endeavored to sell for a number of clients various pieces of property, and the great question that comes up first has been the double car fare.

Q. When you say for your clients you mean people who have had houses and because of death or for some other reason have had to sell them? A. Yes, sir.

Q. Not dealers? A. Not dealers, estates and things you get into as an attorney. Since this threat of a ten cent car fare, I have not sold one piece of property in my sub-division. I am handling a class of people that make their living by the sweat of their brow. They are not the white collar employee and they have large families and when this class of people are compelled to send a number of their family into the city, it makes a great difference in the living of that family. They are the first to be effected by the present hard times, because they are laid off, a number of them are employees in various corporations that lay them off, so they lose their time and some of them I have known them to walk to the city, because they couldn't pay the two car fares.

The other part of Halethorpe is developed by a better class of people, a more progressive, I would say, or more educated class and I live right in there, Senator Benson, lives in the same community and you can feel when you are taking people out to these sub-divisions to make a sale, you feel right away as soon as you start to talk car fare the thought that you have.

Since the first of January, well, I won't say that far, within the last six months, I have had three or four pieces of property that have come in my hands in Halethorpe, and I have only been able to dispose of two of them, and the first thing was two car fares, we are not going there.

At Ridgewood I had a piece of property there and I sold it in no time. Right at the terminus of the one car fare.

CROSS-EXAMINATION.

By Mr. Toole:

Q. About how many people in that neighborhood do you think work to a family? A. I would say in my sub-division alone I would say there are probably 300.

Q. I mean to a family. A. I would say on an average of three.

Q. At least three? A. At least three if not more.

Q. Now wouldn't that average hold over the city? A. Absolutely that would hold good over the city.

Q. Now what would you say, Mr. Hull, about the effect on the facility of people to meet their obligations in the event of this increased fare? A. Well, I know they won't be able to meet them as well as they did before, because it's quite an item if you have a week's pay and figure out three or four or five in the family going to the city and paying 40c a round trip, that's a lot of money coming out of a working man's wage. That ride to Halethorpe of less than two miles, it would be equal to the amount charged on one of these scenic railways in a pleasure park, absolutely.

(Examination concluded.)

Thereupon—

MRS. J. W. WILSON,

a witness of lawful age, produced on behalf of the Patrons of the No. 3 car line, having first been duly sworn, according to law, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Benson:

Q. Mrs. Wilson, where do you reside? A. North Halethorpe.

Q. How many members of your family use the electric cars to go to work? A. At present we have two. My husband and one son. We have had three. My oldest son was married during the late summer and his wife and he are both employed in the city and just recently they moved to Ridgewood because of the two car fares. They felt that while they were even using the commutation books, which was $2.70 a book, they felt that in the course of a two or three years or a little longer that they would be saving sufficient to pay down on a home, and consequently they are both young and they are eager to start that account, while both families, his family and her family are both in Halethorpe and Arbutus.

CROSS-EXAMINATION.

By Mr. Toole:

Q. If you know out in that neighborhood how many people work to a house? How many people use the car lines coming into Baltimore, as a rule to work? A. That would be right hard to say. Some families have two, and three, some only one.

Q. As many as four in some? A. I really am not acquainted with any right now that have four, but there may be. I am not very well acquainted there, because I have only been there three years myself and we have found it right difficult to meet the conditions and there are quite a few people along in my row who have put up their houses for sale, for they cannot keep up expenses. It's too far, they are moving in.

(Mr. Benson) The only element of expense greater at Halethorpe than anywhere else is the car fare?

(The Witness) The car fare seems to be the buggy-boo as the saying goes but when we bought we were told they expected that within the course of a little while that the car fare would be one fare, and that was an inducement to us to buy.

(Mr. Benson) They never expected it to be increased, did they?

(The Witness) No, not at all.

(The Chairman) Who told you there would be one car fare?

(The Witness) The salesmen, that they thought perhaps in the course of time, that the car fare would be reduced to one fare which is the supposition of most people who live out there. We realize that it only takes 30 or 35 minutes to come from Halethorpe to the shopping district and I really think that two car fares is absurd for such a little ride.

(Cross-Examination Continued.)

By Mr. Howard:

Q. Who did you buy from, Mr. Wilson? A. We live on Selma Avenue.

Q. The salesman who told you that was an employee of whom? A. I don't know whether he was the employee of anyone; he was selling property of his own, I think.

Q. Who did you buy your property from? A. Mr. Rittenhouse, who was in business with someone else.

Q. Was Mr. Rittenhouse the salesman you mean? A. I think he had an interest.

(Mr. Benson) Mr. Rittenhouse is here and we will put him on.

(Examination concluded.)

Thereupon—

HOWARD T. DYOTT,

a witness of lawful age, produced on behalf of the Patrons of the No. 3 car line, having first been duly sworn, according to law, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Benson:

Q. Mr. Dyott, you live at Halethorpe? A. Yes, sir, Mr. Benson.

Q. How long have you been living there? A. About two years.

Q. Where did you live before you moved to Halethorpe? A. Wilkens Avenue and Brunswick Street.

Q. Then did you move to Leeds and Wilkins Avenue? A. No, I moved from Leeds and Wilkens into Wilkens and Brunswick and then Wilkens and Brunswick out to Halethorpe.

Q. Do you know the people around the community, Mr. Dyott? A. Know them very well, sir.

Q. Will you explain as well as you can what effect the

two car fares has had upon that community, and what effect the threat of two ten cent fares has had upon that community? A. Well, simply the way that I see it has been the fact that in my roaming around town have frequently spoken to people in regards to moving out there, some of my friends talking about buying property and naturally I believe in boosting my own territory and the first thing they say is two car fares, and I try to argue that down, but that don't seem to get very far, and then they say it takes too long to wait for a car—there being a 20 minute service there during the day time, and that turns them against Halethorpe. On the other hand, if they had the one car fare, I believe it would have a tendency to increase of that territory rather than decrease it.

Q. What effect would two ten cent fares have upon Halethorpe? A. I don't want to think just what effect it would have. I think it would simply kill Halethorpe entirely.

Q. What effect would any further increase or retaining two fares on Halethorpe have upon it? A. It would have virtually the same effect in my opinion. I think it would throw Halethorpe back for many years to come because the fact that two car fares seems to be the bugga-boo to any one buying real estate.

Q. And not only Benson and Link, but practically all of the other builders have practically stopped building, haven't they? A. Have stopped building, because I am in position to know, that they have stopped building because of my business connections out there.

(Mr. Benson) That's all.

NOTE: No cross-examination.

(Examination concluded.)

Thereupon—

CHARLES C. RITTENHOUSE,

a witness of lawful age, produced on behalf of the

patrons of the No. 3 car line, having first been duly sworn, according to law, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Benson:

Q. Mr. Rittenhouse, you are in the real estate business now? A. Yes, sir.

Q. Interested in the Arbutus Land Company? A. Yes, sir.

Q. And also interested with Mr. Kelbaugh in his development there? A. Yes, sir.

Q. You do the selling, don't you? A. Yes, sir.

Q. What effect in your selling of houses have you found that the two car fares had upon this section? A. Well, you hear of a good prospect and you go to see them, and the first thing they find out where you are selling and you say Halethorpe, and the first thing they say that is a two car fare line. Well, yes, we always try to tell them, that it is only a matter of time, when we get more people there, we will get one car fare there, but it's pretty hard to even get them to look at a house. They won't even go out to look at the house when they find out it is two car fares.

Q. You have never made any promise or told anybody that there would be one fare at any time? A. No, sir.

Q. But you had every reason to believe if the car fares were extended to other locations at as far or further than Halethorpe, that they had a right to expect a single fare? A. That's right, yes, sir.

Q. What effect does it have on the value of property? Same class of house, same class of lot? A. Well, we are building a better class of house at Halethorpe than they are in other communities and we have to sell it for less money.

Q. Why is that, any reason besides the two car fares? A. No.

Q. We have good schools in that community? A. Yes, sir.

Q. Water and gas? A. Electric and good roads.

Q. Churches?

(Mr. Howard) Low taxes?

Q. You can't figure out tho, when we happen to have less taxes why the United should be permitted to collect the difference, do you? A. It don't look right.

NOTE: No cross-examination.

(Examination concluded.)

Thereupon—

J. HENRY STROHMEYER,

a witness of lawful age, produced on behalf of the Patrons of the No. 3 car line, having first been duly sworn, according to law, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Benson:

Q. Mr. Strohmeyer, what is your business? A. Real estate broker and developer and builder.

Q. Mr. Strohmeyer, are you associated with anyone in this business or in business for yourself alone? Aren't you connected with certain corporations? A. Yes, sir.

Q. What connections have you, as officer or director of any corporations in the real estate business? A. I have connections with three companies that own real estate, one company owns real estate in Halethorpe, and in other parts of the city and I have connection with mortgage companies and trust companies, appraising property.

Q. What companies do you appraise property for? A. National Mortgage Company, Bonded Mortgage Company, First National Company, Arundel Mortgage Company, and some trust companies, Baltimore Trust Com-

pany, Central Trust Company, for the City of Baltimore and various other people.

Q. And some insurance companies? A. Insurance companies, yes, sir.

Q. Your business is largely appraising property? A. I have done a good deal of that.

Q. And you do that all over the city and in the suburbs? A. Yes, sir.

Q. Now you know this neighborhood out there at Halethorpe? A. Yes, sir.

Q. You know it as compared with all the outlying suburbs like Woodlawn, and Taylor Avenue, Harford Road and Dundalk? A. Yes, sir.

Q. Now can you give any reason why Halethorpe with five and three-eights miles from the center of the City, the closest to the center of the city of all the lines around except one, that's the Eastern Avenue and Middle River line, why it should have two fares and all the rest of them one? Can you think of any conceivable reason? A. The only reason I know is, as I understand the Railway Company, tried to make the city lines the terminus for the one fare.

Q. They don't do it tho. A. The terminus of that southwestern section comes off on an angle and makes Halethorpe so much closer to the center of the city than it otherwise would be if the line was kept on a direct line.

Q. If the line was kept on a direct line we would be in the city? A. Yes, sir.

Q. Does that make any difference to the United whether we are in or out of the City? A. I can't see the reason, because you can do long distances on other lines for one fare than you can go to Halethorpe. For example, you can go to my home on one fare.

Q. Where is that? A. Mt. Washington.

Q. You also can go out in the county? A. Woodlawn, yes, sir.

Q. Lorraine Cemetery? A. Yes, sir.

Q. And Taylor Avenue on the Harford Road? A. Yes, sir.

Q. Dundalk Junction is about a mile and six-tenths beyond the city limits and Halethorpe is about a one and eight-tenths? A. I don't know the distances, but I can readily see they are all a greater distance than Halethorpe.

Q. Now Dundalk Junction is about a quarter of a mile nearer to the City line than Halethorpe, but it's half a mile further from the center of the city than Halethorpe. Now can you see any justification for Dundalk, half a mile further from the center of the city, but only a quarter of a mile further from the city line having one car fare and Halethorpe having two? A. No, I cannot.

Q. Would you say Dundalk Junction had a preference over the locality at Halethorpe? A. You mean considering real estate values?

Q. You know what a preferential rate is, don't you? A. Yes, sir.

Q. You consider that Dundalk Junction, Woodlawn and these other outlying sections in the county have any preferential rate over Halethorpe? A. I should say they had.

Q. Do you think there is any discrimination over Halethorpe by having two fares? A. I should say so.

Q. What effect does the having of two fares to Halethorpe as compared with these other places have upon real estate values in that section? A. Well, the question of fares is also an element for quite an important factor in appraising property, and we take the increased fares and capitalize them, you would have to deduct that amount against the property in the county, and that would depreciate the value of the property in the county on the two fare zone.

Q. That is an assumption that you and other appraisers work on? A. Yes, sir.

Q. When you go out to appraise a house and lot and

ground and you find it's out here and you have got to pay two fares——

A. Yes, sir.

Q. How many people would you assume would grabble to get at that? A. Well that varies. We would say from 15 to 30 cents a day for example and take the low rate for example, figuring on 300 days is $45.00, capitalize that at 6% is $750.00

Q. That's just taking one passenger a day? A. Round trip, yes, sir.

Q. And that makes $750.00 difference in the value of any of these people's homes at Halethorpe, as compared up at Oaklee Station where they have one fare? A. Yes, sir.

Q. And the same thing in all these other suburbs? A. Yes, sir.

Q. At least that much difference and if it has two or three members it just makes all the people that have two or three members out of the market, in this section, doesn't it? A. Yes, sir.

(Mr. Benson) That's all.

NOTE: No cross-examination.

(Examination concluded.)

Thereupon—

MRS. WILLIAM H. TRESCOTT,

a witness of lawful age, produced on behalf of the Patrons of the No. 3 car line, having first been duly sworn, according to law, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Benson:

Q. Mrs. Trescott, how many members of your family have to go to work each day? A. I have one, that's my husband and I have two children.

Q. They go to school? A. They don't ride simply because of the two fares. My husband is a machinist at Mt. Claire, makes $6.00 per day, and takes the reduction of the house, the liability insurance, and the interest, and I feel since I have been out there, I have got to put up the place for sale, because if he would ride the car it would be 30c a day and if my son goes to school that means how much a day? I send him clear to Elkridge and let him walk up there. He would only have to ride to Mount Street to the school that I would want to send him, and I feel that that's too much fare.

Q. In the Western part of the city? A. That's right. And you are no more than on the car when the motorman is on the car and comes and collects your fare and it's not worth it, and my husband works at the B. & O., walks to Halethorpe station to ride into Mt. Clare rather than pay all that car fare, because he has a mile almost to walk to pay that two fares, so we are just going to put up our house for sale, that's all and anybody can do any better than that on $6.00 a day, a machinist, and whenever the B. & O. wants to lay them off they will lay them off.

CROSS-EXAMINATION.

By Mr. Howard:

Q. You said he had a mile to walk anyway? A. Almost a mile from the Summitt Avenue to the Halethorpe line.

Q. Even if he rode he would have to walk that? A. Yes.

Q. You live a mile away from the Halethorpe line? A. Almost a mile, I guess from Summitt Avenue, is every bit of a mile.

Q. And where does he go to school? A. To Elkridge.

Q. How far is that? A. A couple of miles. That would be better than pay two fares and walk a mile besides, at the end.

Q. He walks there? A. Yes, sir.

(Mr. Benson) Nearly three miles.

(The Witness) Yes, but he would rather walk the three miles than pay 16c a day on the car line.

(The Chairman) That's a public school.

(The Witness) No, it's a parochial school.

(Examination concluded.)

Thereupon—

MRS. AGNES STROMBERG,

a witness of lawful age, produced on behalf of the Patrons of the No. 3 car line, having first been duly sworn, according to law, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Benson:

Q. Mrs. Stromberg, you live at Halethorpe? A. Yes, sir.

Q. How many members in your family use the cars? A. Five children.

Q. Five children use the car? A. They go to school in the city.

Q. Whereabouts do they go? A. One goes to Seaton High, at Charles and 28th and three to the Monastery School at Irvington and one to Mt. St. Joe.

Q. Now those that go to the Monastery and Mt. St. Joseph's, they have to get off at Primrose Avenue and walk thru the cemetery, don't they? A. Yes.

Q. In order to simply have one fare? A. Yes, or else ride around which is two fares.

Q. If they had one fare to the City, they could go into the city to any of the city schools for one fare? A. And save the walk thru the cemetery.

Q. Your husband uses the cars also? A. My husband is in the insurance business in Halethorpe.

CROSS-EXAMINATION.

By Mr. Howard:

Q. Are those Parochial Schools free or do you pay for the children going there? A. At the Monastery School, I don't pay for the three.——There is tuition for Seaton and Mt. St. Joe.

(Examination concluded.)

Thereupon—

MRS. J. O'DONNELL,

a witness of lawful age, produced on behalf of the Patrons of the No. 3 car line, having first been duly sworn, according to law, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Benson:

Q. Mrs. O'Donnell, you live at Halethorpe? A. Yes, sir.

Q. How many in your family use the cars daily? A. Three, two regularly, one once in a while, but to get to his business he would have to use it if he didn't have a car, but he uses the car rather than the street car on account of the fare.

Q. The two fares to Halethorpe is quite an extra burden to your family then? A. Yes, it is, and my neighbor has four that use the street car daily, regularly.

CROSS-EXAMINATION.

By Mr. Toole:

Q. Are there many people in that neighborhood that have three or four people riding on the street cars coming to work or to school? A. The majority of them have two but my neighbor has four.

Q. Are there many others that have three or four? A. Well, yes, there are others around would have three or four.

(Cross-Examination continued.)

By Mr. Howard:

Q. Mrs. O'Donnell, what make of car is that you use to save car fare? A. It's a Ford.

(Examination concluded.)

(Mr. Benson) If the Commission please, most all of these people are here, and I think most of the other testimony would be rather corroborated of those that have testified. I think practically everybody here today are people from Halethorpe, whom I think are willing to testify, but I don't think it's necessary to put any more on.

FOURTEENTH DAY.

(Omit entire day.)

FIFTEENTH DAY.

(Mr. Howard) Then if the bulletin is already in, of course, I don't offer it again.

And then in the second place Mr. Tingley read one passage from the testimony of Mr. Hoyt in the gas case. We desire to have all of Mr. Hoyt's testimony in that case, which I believe is No. 1915, we desire to have all of that considered as offered and in the record as showing the whole of what he said.

(Mr. Tingley) That's perfectly satisfactory.

Thereupon—

C. D. EMMONS,

a witness of lawful age, produced on behalf of the applicant, having heretofore been duly sworn according to law, resumed the stand in rebuttal, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Howard:

Q. Now, Mr. Emmons, I want first of all to direct your attention to that part of the testimony which has been offered since you were on the stand which has reference to the possible effect on the number of revenue passengers that a variation of fare may produce, and People's Counsel Exhibit No. 19 was a tabulation that professes to be prepared from Electric Railway Bulletin No. 116. Have you got that before you? A. I have, yes, sir.

Q. Now will you tell the Commission in your own way what you have to say about that? A. In the first place, if it pleases the Commission, I think it stands to reason that almost any increase in fare must in itself show a decrease in revenue passengers for the reason that an increase in fare is generally put in at a time of declining passengers. For instance, at the present time we are losing 5%. Now if an increased fare goes in tomorrow because of our losing 5%, and day after tomorrow we still show a 5% loss, and a rate case next year comes

around, they will show us as having gotten a 5% loss because of the increase in fare, and that would not mean a fair statement at all; it would simply mean that a decrease in riders had caused the necessity of an increase in fare, and consequently if we had a 5% decrease tomorrow with an increase in fare I would say really there was no loss in passengers. If we had a 6% or 7% decrease, the additional one or two per cent might be said to have been caused by the increased rate of fare.

The same way with a decrease in fare the reverse is true. A decreased fare is generally put into effect when the riders are coming back or some condition exists by which a decrease can be given, so if we were making a 5% increase in revenue passengers today and were in position to decrease the fare, and tomorrow showed a 5% increase in revenue passengers, certainly no one could say that the decrease in fare had caused that increase in revenue passengers. That in general, Mr. Howard, is the statement.

Q. That's a general comment on the whole? A. Yes. Now this is also a fact; that while a company like ours has the duty of hauling passengers, and it's our desire to haul passengers, just as many as we can to serve the people as well as we can at the least possible rate, yet in order to serve the people we have to have the revenue. Now if like in Cleveland, the first exhibit here, it does show with an increased rate of fare they have 1.6% loss in passengers, and yet the company makes 14.2% increase in revenue. It seems to me that the increase in revenue then permits the company to serve the other 98.4% of the people riding much better than they would be without the change.

Q. Now Bulletin No. 116 that this is made up from gives the figures by monthly amounts, doesn't it? A. Yes, sir.

Q. Is there any way in which you can tell the general tendency and whether there is any change in the general tendency due to the increase in the fare better than by making a summary that has been made of this exhibit? A. Yes, we have made several charts to show those differ-

ent cities and towns as listed in Bulletin No. 116, which I think shows better than the bulletin itself.

Q. In other words, these charts show each month's results, don't they? A. Each month's results, yes, sir.

Q. And they show in each case the point of time where the change in fare took effect? A. That is right.

Q. So that by looking at the lines you can much better than from the table such as this tell whether there was any resulting effect due to the increase or difference in fare? A. Or it will show perhaps the cause of the need of an increase in fare.

Q. Have you those tables? A. Yes, I have one of the Twin City Rapid Transit, one of the Oklahoma Company and Androscoggin on the same sheet, one of the Birmingham Light and Power Company, one of the Dallas Railway and Terminal Company and the Nashville Railway and Light Company on the same sheet. Cleveland is so complicated with its ups and downs due to the automatic adjustment of fare that we did not prepare it, but we have later another sheet showing St. Louis and Cleveland.

Q. I think there are seven, if I have counted you so far? A. Yes. We have another one showing St. Louis and Cleveland and Baltimore jointly just to show the comparison of the trends of business in the different places. So Cleveland is shown on this later one.

NOTE: Chart above referred to is here filed in evidence and marked, "Applicant's Exhibit No. 26, Rebuttal."

Q. Now the first company that is listed in this Exhibit No. 19 is Cleveland, and I now have before me this chart which you prepared which shows Cleveland, St. Louis and Baltimore, doesn't it? A. Yes, sir.

Q. Will you explain that chart to the Commission and tell that what you think it shows? A. This chart begins in the year 1917 and extends through the year 1926.

Q. That's the same period as Exhibit No. 19? A. Yes. The top or white line shows Cleveland, the cross marks

show where the change in fare took place, ended or began, it shows whether there was an increase or decrease in fare. Now they say Cleveland is regulated by the service at cost plan so when their barometer fund reaches a certain point they automatically increase or decrease their fare.

On the first increase in fare you can see in the early part of 1918 in Cleveland that when there was a decreasing business it happened immediately after the next month, after the increase in fare there was an increase, then a further decrease of business necessitating a further increase in fare. This period happened to be during the flu period, so there is a marked drop with a very quick rebound to a point into the middle of 1919, and apparently the barometer fund had reached such a point that they could decrease their fare.

Immediately after this decreased fare, however, there is another sharp drop with another rebound until the latter part of 1919 with a very largely increased business and the barometer fund gave them another decrease in fare. With this decrease there was still a rising trend until the early part of 1920, when apparently, even with the rising trend, the increase in the expenses caused the barometer fund to fall to such an extent that they had an increase in fare. Immediately after that there was a drop in revenue passengers until in the latter part of 1920 the barometer fund caused another increase in fare, immediately after which there was another decline in passengers until the latter part of 1922, when the barometer fund gave a decrease in fare, the passengers going up and down between the middle of 1921 until the latter part of 1922. Then with an upward trend of passengers in the beginning of 1923 there is another decrease in fare with still an upward trend of passengers until later in 1923, when there was a marked drop in revenue passengers, causing them an increase about the middle of 1923 with a further increase in the latter part of 1923, which increase, and rate of 6c, or 5.59c—all of these having 1c transfer, I don't believe it's been marked on the exhibit—this last rate carrying them to the end of the period.

I am advised that Cleveland is about to make another

change in its rate due undoubtedly to the very end of this period, it being confronted with a declining business.

Now the curious part of these three curves—perhaps I'd better explain St. Louis first.

The St. Louis curve is not dependent on a barometer fund such as Cleveland is.

Q. Cleveland is complicated by that feature of that automatic adjustment you spoke of, isn't it? A. Yes, sir. The St. Louis curve is a condition somewhat as we experienced here. When they need an increased fare they have to go in and prove the thing. So they had an increased fare about the middle of 1918, with a falling business after that at the flu period, followed by an increased business until the middle of 1919, and they had two increases from 7c to then 8c with 7c, 7½ and 7 1-7c tickets, three different classes of tickets until the early part of 1920, when we go up grade, with an upward trend of business they had a decrease in fare which lasted until the end of this period, the business then in St. Louis being shown by the up and down trends in red.

At the present time St. Louis, with an upward trend of business, has changed its fare from 7½ to 8c.

The Baltimore curve is the bottom curve and the curious part about placing these curves together is the more or less similarity of the up and down trends, showing that the business in the various places are more or less alike. I think it's rather curious that in Cleveland their winter peak is considerably more than the winter peak in St. Louis or Baltimore due, I think, entirely to the severity of the Cleveland winters than the winters of Baltimore and St. Louis, and proving to my mind the effect of the automobile on riding.

Is that sufficient, Mr. Howard?

Q. In other words, then, you find a very considerable similarity between these curves, don't you? A. I think there is, yes.

Q. Indicating that general conditions prevail in all three cities where the cause of most of the changes— A.

Are very much alike. Seasonal changes and also changes due to automobile competition.

(Mr. Clark) Chiefly seasonal changes.

(The Witness) No, I would say the decrease is chiefly automobile competition.

(Mr. Clark) The similarity of these curves of up and down.

(The Witness) Are due to seasonal changes to a large extent. The curious thing is that Baltimore when it started in 1917 is so much below Cleveland and when it finishes up in 1926 the curve of Cleveland and Baltimore are not very far apart.

Q. What has been the trend of population in that time? A. I think Cleveland would claim it; has had a greater increase in population than Baltimore. Cleveland's fare on account of the conditions there has been lower than Baltimore's fare.

(Commissioner Harper) This column showing one hundred thousands means the daily ride?

(The Witness) The average daily ride, yes, sir.

Q. In other words, these curves are nothing more than the tables in that circular on which the exhibit of the other side was based. It's those tables reduced to curve form? A. That is right, yes.

Q. Now have you got the Twin City Rapid Transit Company? A. Yes, Twin City is the next one I have here.

NOTE: Chart above referred to is here filed in evidence and marked "Applicant's Exhibit No. 26-A, Rebuttal."

(The Witness) This shows that up to the middle of 1920 they had a 5c fare. During the early part of 1920 they had a downward trend of business, increased their fare to 6c, with an upward trend of business in the latter part of 1920, then an up and down with a general downward trend of business through 1921, '22, '23, '24 until the middle of 1925 with the 6c fare, they changed it to an

8c fare, giving the seasonal change of an upward trend at the end of the year, and in 1926 showing again a downward trend. I think the Twin City are now asking a change in rate.

Q. Of course that indicates a general downward course, but do you see anything in that plat to connect the gross with the successive increases in fare? A. I do not, no sir.

Q. The gross is a pretty uniform one, isn't it? A. It just goes up and down and with a general downward trend. And the change in rate is compelled to my mind by the need of the system due to the falling off of business. Apparently the 6c rate did not hold the business.

Q. In People's Counsel Exhibit No. 19 one item was the Birmingham Railway Light and Power and I think that an increase of fare was followed by a drop of 24.9% and a reduction of the fare by a rise of 28% was referred to. Have you got the plat of Birmingham? A. Yes.

NOTE: Plat above referred to is here filed in evidence and marked "Applicant's Exhibit No. 26-B, Rebuttal."

(The Witness) That statement I think is very misleading without the consideration of the jitney competition that happened during that period. It begins in this sheet with a 5c ticket nnd increasing business up to the middle of 1919, a change was made to the 6c rate with continued increasing business. In the beginning of 1921 the jitneys were allowed to operate in Birmingham to such an extent that they almost killed the street railway business and compelled, in the middle of 1921, the road to go into the hands of a receiver. Before it went into the hands of a receiver, however, it attempted to maintain itself by a change in the rate of fare from 6 to 7c. As soon as a receiver took it over he changed the rate from 7c to 8c, and with that change in rate it about held its own and began an upward trend.

(Mr. Clark) Not only 8c, but 8c, 15 tickets for a dollar.

(The Witness) Yes. It began to hold an upward trend until the latter part of 1923, when an injunction was issued against the jitneys and they stopped operating or

were compelled to stop operating on the lines of the street railways in the latter part of 1923. This made the passengers come back to the street railways to such an extent that they felt they could change the rate of fare again and they reduced the fare from 8c to 7c, 20 tickets for $1.20, or a 6c ticket 7c fare against an 8c fare and 6 2-3c ticket before. Since that time they apparently had a little upward trend. The receivership, as you notice was lifted in the early part of 1924, but the entire story there to my mind is the question of jitney competition, at first a loss and after a gain.

Q. In other words, the period of the jitney competition there fills the depression, which was the cause of a certain slump at one time and an equally certain rise at the other? A. Yes, sir.

Q. You have noted on this plat the different dates when these various occurrences happened, haven't you? A. Yes, sir, I have.

Q. Now would you file the remaining ones and if you have anything separate to say about them——

A. There is the Oklahoma Railway and the Androscoggin and Kennebec Railway on the same sheet. The latter I think should remark is only a small road with a lot of interurban service connecting small cities and the automobile competition has about killed that class of road all over the United States.

NOTE: Chart above referred to is here filed in evidence and marked, "Applicant's Exhibit No. 26-C, Rebuttal."

(The Witness) The Oklahoma apparently was changed from 5c to a 7c rate on a downward trend of business, from 7c to an 8c rate on a further downward trend of business with the effect even that the 8c rate showed an upward tendency of business. What I am trying to show is, as I have said before many times, I think the question of change of rate in itself is more or less immaterial as to the effect on riding. It depends entirely on the competition of automobiles, the trend of business at the time the rate change is made.

The Dallas shows that with a 5c fare up to the middle of 1920 a change of 6c fare at that time and there has been a gradual increase in business since that period up to the latter part of 1925 with a falling trend in the early part of 1926 at which time they raised the fare to 7c, 5 tickets for 30c, which really is not much of a change because it still is at a 6c ticket rate. Dallas claims that in that period from 1920 to 1926 they gained 5% in population.

Nashville shows with a 5c fare up to the month of April, 1920, they changed then to 7c, 4 tickets for 25c, on a declining trend of business until April, 1921. They then changed to a 7c rate, 5 tickets for 35c, and have held a very steady rate of passengers since that period claiming at the same time that they have gained 16% in population from 1920 to 1926.

NOTE: Chart above referred to is here filed in evidence and marked, "Applicant's Exhibit No. 26-D, Rebuttal."

Q. There is one company I believe not included in the plats, the Connecticut Company of New Haven. What sort of a road is that? A. The Connecticut Company of New Haven, that is their home office, is a city and interurban company operating throughout the State of Connecticut, operating in New Haven, in Bridgeport, in Hartford and a great many cities and towns and with connecting roads between.

Q. It has a large element in it then? A. A large interurban element in it, and they have made some various experiments in various rate changes, at one time going back to a 5c fare to see whether that would actually make any change, and this was done under the supervision of the Public Utilities Commission, as they are called in Connecticut, with the result that after I think a four months' test the Public Utilities Commission had them go back to their old rate.

Their condition is quite complicated because of the fact that they tried out a great many different rates of fare with radical zones and it's been rather hard to get any definite curve for them because of the various rates they have.

Q. And frequent changes in zones? A. And frequent changes in zones and the radial system. I have a very voluminous report about the whole thing. It is so complicated that I hardly think it is worth while to try to go through it.

Q. You didn't find anything in it at all to indicate any great change in number of riders resulting from changes in fares though, did you? A. No, there are several statements in here that show that in their opinion first that the flat fare inside of the city limits is essential, that the radial zones is not a workable thing, and second that the question of a change in the rate of fare did not materially affect the change in riding.

Q. Now if there is nothing more, Mr. Emmons, you want to add to the results in other cities on the variation of the fare I will go on to something else. A. There are a lot of quotations I might read from this report but I don't think it is necessary to encumber the record with it. I have given the gist of it.

Q. Now People's Counsel Exhibit No. 20 was a tabulation professing to show the effect of fare changes on the revenue passengers on your Charles Street bus line. Have you got that? A. I have, yes.

Q. Have you had prepared a plat or chart illustrating what you are going to say about that? A. Yes, sir. We have a chart showing on the chart both the Charles Street bus line and the Mt. Royal bus line.

Q. Why do you put the Mt. Royal bus line on the same chart? A. Because the Mt. Royal bus line was the one that made the effect on the Charles Street line.

Q. How so? A. It went in to serve, into operation just at the time that our attention was called to the fact that the Charles Street line was beginning to lose passengers and it began taking passengers from the Charles Street line by running it down Charles Street. They are identical from Mt. Royal Avenue to Redwood Street.

Q. From Mt. Royal to Redwood they were absolutely identical? A. Yes, sir.

NOTE: Chart above referred to is here filed in evi-

dence and marked, "Applicant's Exhibit No. 27, Rebuttal."

Q. Now this Exhibit No. 27, Mr. Emmons, is a plat or chart showing fluctuations in revenue passengers. That's number of riders, isn't it? A. It is, yes, sir.

Q. Number of pay riders on your Charles Street bus line and on your Mt. Royal bus line? A. That's right.

Q. And they both, the spaces are drawn to a similar scale of proportion, aren't they? A. They are, yes, sir.

Q. The same chart also shows when the fare changes took place, doesn't it? A. Yes.

Q. Explain to the Commission what, if anything, that exhibit shows? A. The exhibit shows that with a 5c fare on the Charles Street bus line up to the latter part of 1919 the first change was to 6c.

Q. Does it show any noticeable result in the number of riders with a 6c change? A. It about holds across there with a seasonal change, a little bit lower in the summer time, but about the same where it ended. Then there was a change to 6½c on a downward trend of business.

Q. That's a downward seasonal trend at that time, isn't it? A. Yes. And then it changed to 7c carrying through until July 1, 1922.

Q. Does it show any falling off while it's on the 7c basis? A. No, it really shows an increase in the peaks. There is an increase in the peak in 1921. The peak in the latter part of 1921 is above the peak in the latter part of 1920, and the peak in the early part of 1921 is slightly below the peak in the early part of 1921.

Q. How about the lowest point in 1922, is it above or below that in 1921? A. The lowest point in 1922, I have got the figures here. When the fare rate was changed we were hauling in June, 1922, 180,000 passengers and in June, 1921, we hauled 148,000 passengers, so the June month at 7c was higher than the June month at 6c.

Q. The curve shows every month, doesn't it? A. The

curve shows every month and also I have the figures, because they are a little more definite in some places.

Q. Now when does the competition of the Mt. Royal bus line enter into the picture? A. On December 1st.

Q. That's shortly after the installation of the 10c fare, isn't it? A. Yes. But I think before we get to that, Mr. Howard, we should again repeat what you brought out the other day, the fact that immediately after the installation of the 10c fare on July 1, 1922, instead of showing a decrease the Charles Street bus line showed in July, 1922, 157,000 passengers against 122,000 in July, 1921. In August, 1922, it showed 136,000 passengers against 131,000 in 1921. In September, 1922, it showed 166,000 passengers as against 153,000 in 1921. In October, 203,000 passengers as against 193,000 in 1921. In November it did show a decrease because at that time the Mt. Royal bus came across Charles Street to St. Paul. Prior to this time, while it went on the 1st of July, prior to this time it went down Cathedral Street.

Q. Cathedral is only one square from Charles? A. Yes, but when it came across Mt. Royal to St. Paul then it began to pick up Charles Street passengers who did not walk over to Cathedral Street.

In November then it showed a drop from 194,000 in 1921 to 181,000 in November, 1922.

Then December began the real competition between the Charles Street and Mt. Royal buses, because the Mt. Royal bus was routed down Charles Street, and then it showed a loss in passengers on the Charles Street buses from 212,000 in 1921 to 178,000 in 1922, but the Mt. Royal bus in that time carried in December, 1922, 53,720 passengers.

Now if we follow the curve on through you will notice a continuous increase on the Charles Street buses in revenue passengers with the 10c fare and also a continuous increase on the Mt. Royal bus line with the 10c fare.

Q. And if you superimpose the one increase on the other you would have an approximate steady growth for the whole period, wouldn't you? A. For the whole period for both lines.

(Mr. Howard) I will file with the stenographer and call it Exhibits 27-A and 27-B, the detailed figures on which this chart is based.

NOTE: Detailed figures above referred to are here filed in evidence and marked, "Applicant's Exhibit No. 27-A, Rebuttal and Applicant's Exhibit No. 27-B, Rebuttal."

Q. Now, Mr. Emmons, something was said by the other side about the East Fayette Street bus route as illustrating this proposition about the mere effect or close relation between fares and number of passengers. That was their Exhibit No. 21? A. Yes.

Q. Have you any chart to illustrate that? A. I have a chart showing the Fayette Street bus line operation and also the No. 23 and No. 26 car line operation which should be used in rebuttal to this.

NOTE: Chart above referred to is here filed in evidence and marked, "Applicant's Exhibit No. 28, Rebuttal."

(The Witness) This, Mr. Commissioner, to my mind is only another way of showing one-half of the story and making it look as if it were one way when the real picture is quite different. The fact is that the East Fayette Street bus route between November and December showed a large jump in passengers due entirely to the re-routing of the cars which was ordered by this Commission itself and which took effect on December 1, 1926.

That rerouting took the cars off of the east end of Monument Street and also took the No. 3 car line off from that district, and shows that the result of it is reflected not only in the revenue passengers on the East Fayette Street bus route but also is reflected in the number of revenue passengers carried on the No. 23 and No. 26 car lines.

Q. Let me ask you a question just there. Is the volume of traffic, the number of passengers on car lines very much greater than the number of passengers on a bus line as a rule? A. Very much, yes, sir.

Q. So the relatively slight number deflected from a car line would cause a proportionately great increase on a bus line, wouldn't it? A. Comparatively, yes, sir.

Q. Your heavy traffic is carried by cars, is that right? A. That is right. I think that's all the explanation that is really needed there. The fact that this statement was given may be correct in itself, but it is in a statement that shows the true picture because of this change of the routing as required by the Commission.

Q. So, in other words, the true picture of the comparison of your Fayette Street Bus line with your Charles Street Bus line should have added to it, in order to be a true picture, this story of the result of rerouting of the street car lines? A. Yes, and at the same time the Charles Street Bus line and Mt. Royal also under a 10c fare shows an increase in riding.

Q. Now People's Counsel Exhibit No. 22 professed to be a comparison by curves of the average fares on your railway and also an average wholesale cost of commodities. You recall that exhibit, don't you? A. I do.

Q. Have you prepared an exhibit that you have prepared along similar lines? A. I have, yes, sir.

NOTE: Chart above referred to is here filed in evidence and marked, "Applicant's Exhibit No. 29, Rebuttal."

Q. In the first place, Mr. Emmons, refer to the other side's exhibit, People's Counsel Exhibit No. 22. Have you any comment to make on that as to the statement that that's a comparison of the cost of living with car fares in Baltimore? A. Well, this isn't the cost of living. I think Mr. Wolf admitted on the stand that there was a difference between the cost of living and the all commodities wholesale prices.

Q. What has he selected as the basis for comparison, a high or low subject? A. My recollection is Mr. Wolf said he had a great number of curves and he selected the one that seemed to fit the condition best. It looks to me that it might fit it worse. It might fit it best from his

viewpoint, but certainly it fitted worse from our viewpoint.

Q. You mean he selected the lowest? A. He selected the lowest, yes.

Q. Now what have you put on your exhibit that has just been filed? In the first place you have the fare curve? A. I have shown Mr. Wolf's curve of the all commodities prices after making the drop that he gave has shown a sharp rebound at the present time, so that instead of being about 144 as he entered it it is really now about 149.

I have also shown on this United States Bureau of Labor statistics cost of living in Baltimore.

Q. Now are those official figures? A. These are official figures from Government reports. It shows about 176.

I have also shown Untied States Bureau of Labor statistics Union Labor wages which has gone up above 340.

I have also shown our own curve of platform wages and maximum hourly wages which has gone up to about 224.

I have also shown the curve of our own operating expenses per car mile which has gone up over 210, about 211. I think this is really the picture of curves if that is to be shown.

Q. Now the only curve on there that is entirely identical with any on the other side is the average fare curve. That's the same, isn't it? A. That's right, yes.

Q. And the wholesale commodities differ only in that you have brought it up to what time? A. Up to about January 1, 1927.

(The Chairman) Mr. Emmons, on your chart here you show a very marked jump in your rate of average fare from 150 to 200. That follows out Mr. Wolf's idea that if the increase is granted it will reach that figure?

(The Witness) That's right, yes.

(The Chairman) Or increase asked for.

Q. Let me ask you again, Mr. Emmons about the end of the wholesale commodity curve. Has that been figured by months? A. Yes, that's been figured by months.

Q. So it's later than January 1st? A. These are October figures for the wholesale commodities?

Q. At any rate, Mr. Emmons, wholesale commodities are up how many points since the period Mr. Wolf stopped his calculation? A. Up approximately five points.

Q. Anything more you want to say about that, Mr. Emmons? A. That's all I think need to be said. I might say on that wholesale commodities thing, Mr. Howard, that while the average is shown on Mr. Wolf's scale or our revised scale there are some articles in it, in looking over it, there are some 46 articles that are considerably over 200%, so that the average of 500 and some articles that they pick certainly is not a fair criterion of what one certain article is. For instance, we find some that are up to 300, 323, 294. There are 46 that are over the 200%.

(Commissioner Harper) It depends on the weight you give to the articles.

(The Witness) These are separate articles in themselves, and of course when they are all weighted we get this 149 which we have, but he is comparing those 550 weighted articles on the basis of 149 with our one specific thing of a rate. Now as I say in that 550 articles there are 46 of them that in themselves are over 200%, so if you are going to take one article it's quite different from the average of 550.

Q. And you mean you are not an average consumer of average wholesale commodities? A. We are not.

Q. You have your own needs? A. Yes.

Q. And I think in your testimony that was gone into.

Now People's Counsel Exhibit No. 24 was a tabulation of what the present fares are in cities that have a population of over 100,000 inhabitants. Have you got that?

A. Yes. I would like to check this with Mr. Wolf. That was based on A. E. R. Bulletin No. 116?

(Mr. Wolf) The same article that was in the Journal for October.

(The Witness) Now they have a new bulletin, No. 163, with a supplement. This new bulletin is dated October 1, 1927, and they have a supplement out dated November 1, 1927. Have you those?

(Mr. Wolf) I had those but I didn't use them.

Q. Will you give the Commission any information that that later bulletin has which you think bears on this question? A. In the first place I want to say this; that while Mr. Tingley and Mr. Wolf have taken Boston out of the 10c flat fare cities because in some places in the small communities they have on limited routes 4 tickets for 25c. Boston is really more of a flat fare city, flat fare 10c city than we would be on the 10c because of the fact that we propose, on the 10c fare, to have children's half fare for 5c, a school ticket of 5c, and commutation rates at less than 10c.

Q. So you would be less of a flat fare city than Boston? A. Yes I would say we would.

Q. If you got all you asked for? A. I would say we would. I have this from the late bulletin; that the trend of fares over the United States has been upward since July 1, 1923, and is continuing upward. On October 1, 1927, the average fare of 272 cities reporting was 7.9516c and November 1, 1927 the average fare was 7.9846c, which is the highest average fare that the street railway industry has ever had not excluding the War period.

There are at the present time, or since the November bulletin, there have been twelve different cities that have changed the rate of fare. There are three interurban roads that have changed the rate of fare. At the present time there are fourteen fare cases pending.

Q. What are the direction of those changes? A. The changes are all up with the exception of a municipal city which has put in a weekly pass, and the information

here does not say about the flat fare. I presume it's the same, a flat fare with a weekly pass. I think they give a statement that there are only, I have forgotten, of basic 10c fare cities, but my statement here is that there are—I got this morning, dated November 26th, from New York—this gives 219 United States cities.

Q. Having a basic fare of 10c. A. That's right, yes.

(Mr. Tingley) Those are not cities of over 100,000?

(The Witness) No, but I counted the cities of over 100,000 in this and there are 31 cities of over 100,000 that have a basic 10c fare.

(Mr. Tingley) We show 30 on the exhibit.

(Mr. Clark) But Boston only having a flat?

(The Witness) There are 30 cities that have a flat 10c rate. If you want me to read them I will give them to you.

(Mr. Clark) Without any tickets?

(The Witness) Without any tickets at all except maybe like Boston as those from local lines of 4 for 25c, but they are not down in the city, and to my mind they do not exclude Boston in any way from the flat fare 10c cities.

(Mr. Tingley) Suppose you read them, Mr. Emmons, to get them in the record.

(The Witness) Berwyn, Illinois. I can give you the populations, too, if you want them.

(Mr. Tingley) Yes, suppose you do.

(The Witness) Cicero, Illinois, 65,400; Forest Park, Illinois, 10,768; Maywood, Illinois, 12,072; Oak Park, Illinois, 53,500; Auburn, Maine, 16,985; Bangor, Maine, 25,978; Bath, Maine, 14,731; Lewiston, Maine, 35,500; Villercia, Massachusetts, 3,646; Boston, Massachusetts, 787,000; Braintree, Massachusetts, 10,580; Concord, Massachusetts, 6,461; Framingham, Massachusetts, 17,033; Holyoke, Massachusetts, 60,400; Lexington, Massachusetts, 6,350; Natick, Massachusetts, 10,907; Needham,

Massachusetts, 7,012; Newburyport, Massachusetts, 15,518; Newtonville, Massachusetts, 5,700; Wakefield, Massachusetts, 13,025; Waltham, Massachusetts, 35,700; Wellesly, Massachusetts, 6,224; Woburn, Massachusetts, 16,574; Worcester, Massachusetts, 193,000; Morristown, New Jersey, 12,548; Ocean City, New Jersey, 3,721; Lackawanna, New York, 17,918; Mauchnuck, Pennsylvania, 3,666; West Chester, Pennsylvania, 11,717.

(Mr. Tingley) Do you know offhand how many of those are served by elevated railroads, Mr. Emmons?

(The Witness) Cambridge and Brookline and the others are not in here, because they are part of the Boston system and because they have these local fares. I think Forest Park and Oak Park and these Illinois towns are served by the Chicago Elevated Railways.

(Mr. Clark) How many states now have you cited there?

(The Witness) Six states.

(Mr. Clark) Only six states?

(The Witness) Six states. There will be fifty-three some of these days, Mr. Clark.

Q. Mr. Emmons, in reference to the comment that has just been made on some of these, being cities of small size, which can stand the fare increase to a flat 10c basis better from the standpoint of the economic limit, a small town or a large town? A. The larger city without doubt.

Q. Why? A. Because of the fact that in the smaller cities the people can walk.

Q. They don't get as much for their money? A. They don't get as much for their money, and people can walk. I might also call attention to this in this bulletin also; it shows in 1927 out of 64 fare changes 60 of them have been fare increases.

Q. There was an exhibit filed by People's Counsel consisting of a brief summary of what various financial institutions and other things were said to predict about the future course of business. Have you any comment

to make on that? A. Exhibit No. 26, yes sir. Well I have this comment. In the first place I think the employment situation has very little to do with the question of our own pocket or the question of the future, for the reason that employment, there isn't such a great amount of unemployment at the present time, and there is not much prospect for change. The second thing Mr. Wolf refers to is weather conditions.

Q. We haven't summoned the proprietor of the Hagerstown Almanac have we to show us next year's weather conditions? A. But this is last year's. I have gotten meteorological pamphlets and have put together a statement of the ten months of 1926 compared with the ten months of 1927, and we can't get much comfort for our decrease out of that, because it shows that there were 103 clear days in 1927 as against 114 in 1926.

Q. You mean up to this time of the year? A. Up to the 1st of November this is.

Q. You are not adding any estimates? A. No, I am not. It's hard to tell what the weather is going to be. I am not a weather prophet.

Q. So if you take the year as a whole so far the weather conditions have been very much alike with respect to clearness and cloudiness? A. I was going ahead. Partly cloudy there were 89 this year as against 84 last year, and now when I say part cloudy days I mean clear in the morning and cloudy in the afternoon or vice versa, there were 112 this year as against 115 last year, and the rainy days of .01 inch precipitation.

Q. Is that your test of a rainy day or the Weather Bureau's? A. It's the Weather Bureau's. They have two, .01 inch and ¼ inch. I will give the ¼ inch next. That is .01 inch precipitation is very little rain that day, is 112 this year as against 110 last year, against real rainy days, which really would affect business, it was worse last year than this, having 15 of the rainy days of ¼ inch or more precipitation as against 38 this year. The total sunshine hours showing 2,307 in 1926; 2,222 in 1927. I don't believe that would affect riding very much.

Q. So your comment on weather conditions from a street railway standpoint for the two years, 1926 and 1927, would be what in a word or two? A. Would be the weather conditions has had no detrimental effect one way or the other.

Q. Because they were very much the same? A. Very much the same, yes sir.

(Mr. Clark) Did we have this kind of a fall last year? I don't remember it.

(The Witness) I didn't go into November and November this year is going to be better than last and yet we are showing 5% decrease.

His third reason is the automobile competition and there I feel we have the real answer to our difficulty. We have already given an exhibit of the increase in licenses. In looking up the question of cabs and hacks which are really great competitors of ours we find that in the last 20 years, from 1907 to date, the total cab and hack licenses increased from 233 to 4,135.

We find that the gas tax has shown the use of gasoline in increasing proportions, from a gasoline expenditure in 1925 of 4,000,545.

Q. That's within the State of Maryland? A. That's within the State of Maryland. 1926, 4,000,999, with an estimated expenditure of 5,000,499 in 1927.

Q. Whose estimate? A. This is estimated by the Highways Engineer and the Automobile Commissioner, a joint estimate of theirs. They estimate a further increase in 1928 of 5,000,844, and in 1929 of 6,000,136.

Now the actual use has exceeded the estimates in 1925 and '26, and if their estimate carry on that way they will exceed in these other years.

Q. In that connection have you had prepared a table showing the number of gallons of motor fuel sold and used in this State? A. Yes, sir.

Q. On which taxes were paid? A. Yes, sir.

NOTE: Statement above referred to is here filed in

evidence and marked "Applicant's Exhibit No. 30, Rebuttal."

Q. Mr. Emmons, isn't there a lower gasoline tax in some of the adjoining states? A. Yes, in Delaware there is a 3c tax, in Pennsylvania there is a 2c tax, in the District of Columbia a 2c tax, in New Jersey there is no tax, in West Virginia is a 3½c tax.

Q. And that as compared with the Maryland tax has had effect on the consumption in this State on the purchasing of gasoline? A. Some possibility of decreasing the purchases here. I have heard some people state that they went over the line to get gasoline so as to save the taxes.

(The Chairman) What is the Virginia tax?

(The Witness) 4½c is the Virginia tax. That might have some effect. At least it wouldn't increase the amount used here.

(Mr. Tingley) Would it have the same effect as an increase in fare on passengers?

(The Witness) If they could go across the line and get it cheaper it might.

Q. Is there any further explanation of that exhibit? A. This is in gallons instead of dollars and it shows a gradual increase from October 31, 1923, from 67,000,000 to 85,000,000 for the year ended October 31st, 1924; to 97,000,000 for the year ended October 31st, 1925; to 107,000,000 for the year ended October 31st, 1926; to one hundred and practically twenty-one million for the year ended October 31, 1927.

(The Chairman) The consumption has been growing by about 12% a year.

(The Witness) 10 to 12% a year. In the last four years pretty near 80%.

Q. Does it show any symptom of having reached the peak? A. It does not. These estimates look like the State officials do not think it has reached the peak.

Q. Whose figures are these, by the way? A. These

are from the Treasurer of Maryland computated from the receipts of the Treasurer of Maryland and from the Motor Vehicle Gasoline tax.

(Mr. Clark) What's the purpose of this exhibit?

(The Witness) Just to show the increasing use of the automobile. We are still contending and we feel we are absolutely right that the automobile is the cause of our trouble.

(Mr. Clark) The use of the automobile and not the number in use then?

(The Witness) The number in use means the use of them.

(Mr. Clark) Not necessarily, because the riding habit is increasing probably.

(The Witness) People don't buy them to let them stay in the garage.

(Mr. Clark) The riding habit is increasing and while it shows the increase in the use it is not necessarily in the number.

Q. Mr. Emmons, there was some reference in the summary of what the President is supposed to have said in People's Counsel Exhibit No. 28, some reference to the increase in the use of automobiles as being a factor in the loss of railroad revenue. Can you illustrate that by any examples that you have before you? A. Yes. I have the Twenty-Sixth Annual Report of the Maryland and Pennsylvania Railroad Company which shows in the statement a gradual decrease.

Q. Instead of giving it year by year, what was the revenue in 1921? A. In 1921 their passenger revenue was $107,000; 1926, $55,000, just about half.

Q. And is the change a progressive one between those figures? A. Entirely so. One hundred and seven is the first figure; 1922 is ninety-four thousand; 1923 is eighty-six thousand; 1924 is seventy thousand; 1925 is sixty-four thousand and 1926 is fifty-five thousand.

Q. And prior to the first year you have taken there

was the passenger revenue increasing or decreasing? A. It was increasing from 1917 up to 1920; there was an increase.

Q. Have you any figures throwing light on the same matter from the B. & O.? A. I might call attention to the statement in the report saying "the decrease in passenger revenue reflects the continuing increase from year to year in the number of privately owned automobiles and the use thereof by the former patrons of our trains." That's the Maryland and Pennsylvania statement.

In the B. & O. report in their traffic statistics by years it shows somewhat similar; that from the year 1920 there has been a gradual decrease in revenue passengers beginning with twenty-five million in 1920, 21,000,000 in 1921; about 18,000,000 in 1922; about 18,000,000 in 1923; about 17,000,000 in 1924; about 15,000,000 in 1925 with 13,000,517 in 1926.

In another portion of their report, in giving the average distance haul per passenger, we find in those same periods a gradual increase in the length of the distance haul, so the inference to my mind is that while they have been losing passengers they have been losing the short haul passengers, and the passengers retained are the long haul passengers, because this distance showed a gradual increase from 41.82 miles in 1920 to 65.80 miles in 1926.

Q. And during that same period the B. & O. as a whole has shown a healthy condition of growth, hasn't it, due to its freight business? A. It has, yes.

(Mr. Tingley) Is that true for 1927, Mr. Emmons?

(The Witness) I haven't any statement for 1927.

Q. Mr. Emmons, People's Counsel Exhibit No. 35 professed to be an attempt to carry your prediction forward to the end of 1930. You remember that, don't you? A. Yes, I do.

Q. Is that a fair application of your——

A. I do not think so. I did say in my testimony we have been having some continuing decrease and I ex-

pected a decrease in 1928. I didn't propose to indicate that I was prophesying for 1929 and 1930.

(Mr. Tingley) The record shows it.

(The Witness) Not that I could find.

(Mr. Tingley) I can find it for you.

(Mr. Howard) What does it show?

(Mr. Tingley) That he anticipated a further decline for 1929.

(The Witness) That must be a mistake. I never had in mind trying to anticipate anything beyond 1928.

Q. You didn't for instance mean to predict that in 33 years your passenger revenue would be zero? A. I certainly did not.

Q. Which would be the result of carrying that same process further.

(Mr. Tingley) Where do you think it will stop, Mr. Emmons?

(The Witness) I haven't any idea. If Mr. Brannon's effect of the automobile down town——

(Mr. Tingley) Won't it stop until that is regulated?

(The Witness) I think there is bound to be some saturation. Now where that is, Mr. Tingley, I am not prepared to say.

(Mr. Tingley) It might just as well be 1935 as 1928?

(The Witness) No, I have been optimistic in the last few years that we had reached the saturation point. I have lost some of my optimism for this year and next year. I don't think we can go very much further. I think some of these families are some day going to figure up their costs and find that even a 10c fare is vastly cheaper than an automobile.

Q. In that connection, Mr. Brannon criticized the position of the Company to stop the parking of automobiles? A. I wish we had some ability to do it. We have been represented in traffic survey after traffic survey, all of

which have made that recommendation, and when it came to the last traffic survey of Kelker & DeLeuw the recommendation was again made, and it was just part of the whole thing. We ourselves went to the only expense and went to the only effort to try to carry out any recommendations in that traffic survey in re-routing a group of our lines, and we said at that time that we felt there should be some co-operation if we went to that expense and did anything at all in carrying that out; we should have some co-operation. We re-routed all of the group No. 1, so-called.

(Mr. Tingley) That was done under order of the Commission?

(The Witness) That was done under order of the Commission and the Commission have no control of the automobile traffic and I think they would help the situation themselves, but for the present time it's absolutely in the control of the Police Commissioner as it used to be, so I see no way that we can help the matter. I only wish we could.

I really do feel, Mr. Howard, that it's a grave mistake that the 80% of the people that ride, trying to get transportation in this town, should be so seriously held by the other 20% who are able to buy a more expensive transportation, a more exclusive one, and yet they use all the streets for their own benefit to the detriment of the 80% of the population that are trying to get home.

(The Chairman) I think we can all agree on that, Mr. Emmons, but we can't do anything about it.

(The Witness) Quite right. I am sorry.

(Mr. Tingley) Except ride the cars ourselves which most of us don't do.

(Mr. Clark) But that wouldn't have any bearing on a trip from the outlying section down town, and there is just as much complaint about the inbound traffic as the outbound.

(Mr. Howard) What wouldn't have any effect on the inbound service?

(Mr. Clark) the congestion down town.

(Mr. Howard) You feel that only effects outbound service?

(Mr. Clark) No, I say that congestion isn't in the outlying sections of the city.

(Mr. Howard) You mean for instance at North Avenue and Charles Street there is no such situation?

(Mr. Clark) Just at that point there may be a little.

(Mr. Howard) They say more automobiles pass there than any point in the city.

(Mr. Clark) They don't have the congestion they have down town. You go up there and you won't find the street cars are held up to amount to anything.

(Mr. Markell) They had a photograph in the paper the other day saying that was the busiest place in town.

(Mr. Howard) Some people say that is the new center of the city.

(The Chairman) You can't hold up traffic in one section of the city without affecting it in some other section of the city. You can't tie up traffic either going in or going out without having it affect the whole line.

Q. Mr. Emmons, People's Counsel Exhibit No. 36 was a comparison of your operations in 1927 with your operations in 1922. Why was 1922 selected for that base, do you think? A. That's another place that Mr. Wolf tried to make the best picture he could, which he did. 1922 is the lowest year we have from 1919 on.

(Mr. Tingley) It's the most comparable figure though in these figures.

(The Witness) I don't think it is, no. I think he just made the best picture that could be made. I do want to say this; that the picture isn't fair in a good many ways. It isn't fair because it was taken that way.

(Mr. Tingley) We will show why he took it later, Mr. Emmons.

(The Witness) He also does this. While he takes $1,200,000 of economies off of our operating expenses he doesn't give credit to the fact that part of those economies to the extent of over $100,000 are already included in the other figures of 1927 so it's repeated by that much.

Q. Let me make that clear. You had estimated that you had accomplished economies of $1,200,000? A. The economy figure was $1,800,000, but that went back to 1918.

Q. Part of those economies consisted of a reduction in expense, is that right? A. Yes.

Q. Did any part of it consist of a reduction in taxes? A. Yes, part of it consisted of a reduction in taxes.

Q. And did any part of them consist of an addition in revenue? A. Part of them consisted of an addition in revenue.

Q. And your present criticism is that he has treated the whole here as if it were all changed in Operating Expenses alone, is that right? A. Yes, sir. And also he made no allowance for the termination of the 1911 power contracts in 1926, which added materially to our power costs, and while he has given a three per cent. increase in cost of operation against a three cents per hour in wages, the cost of operation is really more than that.

I don't think there is much in this comparison. He made no allowance either for the $315,000 which we feel is absolutely necessary for the question of taking care of the increased accident cost, the increased power cost and increased taxation. If you take that 315 from here, from the 1139 it will give you 834 as against his 799. If you take the $100,000 off that was included in the other accounts would bring it down to about his figure.

Q. Now, while we are on that topic there were some exhibits offered by Mr. Clark with the apparent purpose of showing lack of economy. Have you anything generally to say about them? A. If you want to go over them now I can very easily make an analysis of all those. It goes back to a year when the operation was most severely criticized and lack of supervision and there are

naturally reasons for all the changes. Again Mr. Clark in taking 1916 took the lowest year of employees that the Company I guess ever had.

Q. Suppose you take these exhibits up that you referred to and tell the Commission what you have to say about them.

(Mr. Clark) That's where you started in your information to me, 1916. That's the reason I took it. I could have taken 1917 and shown a better result.

(The Witness) We gave you what you asked for.

(Mr. Clark) I didn't know that when I asked for it. If that was an unfair year to compare with 1927, I apologize. It was absolutely accidental.

(Mr. Tingley) Any year you take is unfair, Mr. Clark.

(The Witness) There is quite a difference in the picture shown by certain years, Mr. Tingley. The 1916 total monthly payroll shows 359, while 1917 shows 422 total; 1918, 452; 1919, 535; 1920, 533; 1921, 539; 1922, 515; 1923, 516; 1924, 533; 1925, 551; 1926, 561; and 1927, 560. Now, taking Mr. Clark's exhibit——

Q. What number of Mr. Clark's exhibit have you before you Mr. Emmons? A. No. 9. He shows an increase for instance in the Superintendent of Transportation, increase from 68 to 105. Again I must say that in 1916, the supervision was entirely too little, and since that time the additions have been made of the various employees. There has been a supervisor of motormen with 5 instructors of motormen, one instructor of conductors. That's a mere matter of giving safe service, of operating a car economically and comfortably.

Q. Are they instructors or green hands? A. They are, yes.

(Mr. Clark) How did you do it before? The motormen are not any better now that they are before.

(The Witness) We think they are, Mr. Clark.

(Mr. Clark) And yet you have more accidents.

(The Witness) We don't have more accidents. We

have more accident cases, we don't have more accidents, and it is to be presumed we would have more accidents with all the number of automobiles we have here in town. Our accident ratio per ten thousand car miles is less today than it has been any time since 1919, but our accident costs have gone up.

(Mr. Clark) Because as you say the jury takes into consideration the cost of living?

(The Witness) I don't know. All the reason a jury gives is the man is earning more and consequently is entitled to be reimbursed after his time off. Hospital bills are double what they were, doctors bills are double and nurses bills are double and everything else, all of which we have to pay for.

Q. Even lawyers cost more? A. Even lawyers cost more.

(Mr. Clark) Exhibit No. 8, which is the exhibit on which this Exhibit No. 9 is based shows that you haven't treated the Law Department as well as your other departments. You see I never discussed that at all?

(The Witness) That's too bad.

(Mr. Clark) Very little increase in 1927 over 1926?

(The Witness) That may be. In order to better service we have found it necessary to have our street inspectors increased from 21 to 37 just to take care of situations like was complained of this morning by Mr. Clark's witnesses. These street inspectors are all over town, and if a block occurs they are supposed to get there as quick as they can to detour the cars around the block just as quick as they can possibly detour them. We have in order to save on power, get an economical use of power a Power Record Department which is now employing six men.

Q. What's that under? A. That's under the Superintendent of Transportation. All of these are the increases making up from the 68 to 105. We have the Safety First Department which has shown splendid results in the reduction of accidents per 10,000 car miles.

We have an increase of three men in that. We have an increase of two due to employment of female conductors. We have an increase of one due to the establishment of the Lost and Found Department; one due to Caretaker at Overlea, and five due to a Police Department to properly police our service. That makes the total of the increase from 68 to 105. We think it's perfectly justifiable and if necessary in the interest of good service.

(Mr. Clark) What did you say about the police?

(The Witness) We have a Chief of Police and four police in order to police our service for the safety of our riding public.

(Mr. Clark) I didn't know you had a Police Department?

(The Witness) We have a Police Department. Quite essential too. They go any place that there is likely to be any disturbance on the cars. They are at the parks in the summer time. If there is a big crowd of people that are coming to the City they go there and they go any place where they might be needed.

(Mr. Clark) And prior to that wasn't it the custom of the Company to call on the Police Department of the City wherever they expected crowds and they thought would need police protection?

(The Witness) We call on the City police too, but we thought we needed our own. We are held liable for any disturbance on our cars and we find it's good policy to have these.

(Mr. Toole) They couldn't arrest anybody at railroad stations?

(The Witness) Not inside the stations but they can preserve order on our cars. They have police powers, yes.

(Mr. Toole) On your property?

(The Witness) Yes. Shall I go through all of these Mr. Howard? They are all a question of service.

We will take the next one, the Traffic Department.

That's a question of trying to make our schedule. One cause of this increase, and we are very glad to do it, is the fact that we undertook some years ago to do all the checking not only for ourselves but for the Public Service Commission, and we work in connection that way with the Public Service Commission.

The Cashiers' Department, a large part of that increase is due to the fact that before this increase was made the conductors turned their money with a statement in the bag and put it in the safe. It was always making contentions; if a conductor was over or short he blamed it on the office. In order to get rid of that we found it necessary to put at all our car barns a day and night receiver who counts the money directly from the conductor so there is no question as to the correctness of the returns. That's the big item that makes that.

The Purchasing Department increases has been due entirely to the supervision of purchasing more closely, getting the bills through in order to discount bills, and also adding to his department which wasn't before the storekeeper and his organization. In 1916 they did not come under the Purchasing Department.

Q. You had them through? A. We had them under another department.

(Mr. Clark) Which department were they in before?

(The Witness) I will have to look that up and see. They may have been just per diem men. I am not sure, Mr. Clark. I can give you that later.

The Claim Department has increased because of the necessity of keeping after it closely and our claims even with the increase we have asked for the amount paid out for claims is very materially less than two cities of our corresponding size, St. Louis and Cleveland, and I think in Philadelphia and most all towns that are larger than we. The only town I know of that pays out actually less in claims is in Cincinnati, and they have a remarkable Claim Agent that does all the work and never calls on a claimant, expects him to call on him.

The Valuation Department, criticised as to the non-

necessity of it, I think is very small, it only having four to do all the work we are having them to do and is of great value and of utmost necessity of having the valuation aboslutely kept up to date. We have so many changes during the year that if we don't keep it up there will always be a question of what the valuation is.

(Mr. Clark) Isn't that attended to in formal channels?

(The Witness) It can't be unless you have some one person to look after it and make additions and subtractions and watch the whole thing, it can't be done. Every property I know of that has gone through a valuation, with the expense that we have gone to, have organized a Valuation Department to keep the valuation right up to date so day after day we know what our figures are. We have a Valuation Department that has a lot of work to do.

Q. If you didn't have that Valuation Department you would have to have other employees? A. We would simply have to add the same number of men and then it would be confused with other work and then it wouldn't work properly. Unless you have one certain man whose duty it is to look after that it won't be done. That's been found out in property after property.

(The Chairman) He looks after retirements?

(The Witness) He looks after any change in the property because of change in valuation.

Our Welfare Department has increased. We have worked extremely close with our employees on the question of welfare. We recently put on the question of group insurance and that amount is absolutely necessary.

(Mr. Clark) That Superintendent of Equipment increased from 25 to 50 employees?

(The Witness) That's due entirely in the change of the manner of cars, the complication of cars, and also a bringing over from the per diem payroll onto the monthly payroll a certain number of men. I can give those to you. There are 15 men in a bunch of that increase that have been brought over from the per diem payroll to

this monthly payroll. They simply switched one side to the other.

(Mr. Clark) You put them people in the place of the per diem men?

(The Witness) No, simply changed the method of paying.

Q. Doing the same work as before? A. Doing the same work as before but we changed the method of paying.

(Mr. Clark) What's included in the work of that department?

(The Witness) They keep up all of our cars, 1500 cars, and all of our buildings, and all electrical equipment of cars, the trucks, the car bodies, reconstruct them, paint them, it's a big organization.

(Commissioner Harper) Mr. Emmons, why does the Welfare Department show such a large percentage of increase in the payroll?

(The Witness) The Welfare Department has taken over a great deal of things that it hadn't at all in 1916. In fact in 1916, the Welfare Department had hardly been organized. It was organized largely during the war and since that time they have taken on the organization the question of nurses to employees, the question of doctors, the question of compensation, pensions to the men. The Pension Department is part of this Welfare Department, and even last year also it was added to on account of the group insurance.

(Mr. Clark) What does the Publicity Department do?

(The Witness) In the Publicity Department we have —Mr. Burroughs of the Publicity Department gets out our "Trolley Topics," the "Trolley News" and looks after everything of that nature. It's a house order department that we think is very helpful in our relation with our men.

(Mr. Clark) Do you think many people read them?

(The Witness) I don't know.

Q. What is the circulation Mr. Emmons? A. don't know the circulation.

Q. It's large isn't it? A. Yes, it is. The "Trolley Topics," the house organ, I presume will run about 10,000 copies. I imagine the "Trolley News" must run up to 50,000.

(Mr. Toole) How about "Rush Hour Rollo."

(The Witness) Not included in that. He is included in the——

(Mr. Tingley) Service?

(The Witness) Service Department. Didn't you like his poetry?

(Mr. Toole) I certainly don't.

(The Witness) You haven't heard of him for some time.

(Mr. Clark) I see you increased the employees in the Publicity Department from 2 to 5. It takes five people to do this publicity work?

(The Witness) Now, listen, that Publicity Department has a lot more than you think it does. It handles all the publicity for the special car work, the special bus work, the outings and tours. It does lecture work in the different places to let people know about our service and things of that kind, so from 1916 to 1927 we have only increased that 3 employees and we think we have not increased it very much.

(Mr. Clark) Is it customary for street railway companies to have a department of that kind?

(The Witness) It's not only customary for them to have a department of that kind but you will find a great many more in it because they do their own printing in a department of that kind and do a great deal more work than we do.

(The Chairman) You have only, Mr. Emmons, increased your platform men about 300 since 1916?

(The Witness) Yes, that's been due to the larger cars,

the articulated cars, the one man cars, trailer cars, multiple unit cars, all of which are doing now with one man what two men used to do before. In fact a two man car today, double truck, is doing about twice the work that a single truck car did before with two men.

(Mr. Clark) Well, that would show a decrease in platform men?

(The Witness) In platform men?

(Mr. Clark) This is an increase?

(The Witness) Since 1916, we have had more than an increase of 11% in revenue in that time and an increase in car miles of 9.6.

(Mr. Clark) The revenue is due to the increased fares?

(The Witness) To some extent, yes.

(Mr. Clark) You would look to the revenue passengers, not the car miles to denote the demand for the position of platform service?

(The Witness) All I can say is that the number we have now are required for the service we are giving.

(The Chairman) The difference in pay from $2,100,000 to $4,467,000 is just the increased pay of the men?

(The Witness) Yes. They have been raised from 26 cents up to 52 cents.

Q. And you have to have platform men to handle the people in the rush hours don't you?

(The Witness) Yes, that makes a great deal of trouble.

Q. Is that in any wise different from 1916? A. The peak of our rush hour is getting worse all the time.

Q. Now at the end of that exhibit of Mr. Clark's he shows a per cent. increase in all your departments?

(Mr. Clark) Maintenance of Way. How is it you have made absolutely no increase there in the number of employees?

(The Witness) The Maintenance of Way was really

an organized department in 1916. It was a real organized department at that time and it was given special attention at that time by Mr. Mifflin Hood.

(Commissioner Harper) There you have one less employee and the payroll is $707,000, where it was $283,000 before?

(The Witness) That's an increase in rate. The rates have all increased very materially, Senator. The wages have all increased. It is three times what they were before in the Maintenance of Way Department.

Q. Is that largely unskilled labor? A. Yes, it is.

(Mr. Toole) They are not high enough yet, Mr. Emmons?

(The Witness) We need more money for it.

(Mr. Clark) You say they had a thoroughly organized Maintenance of Way Department. In your first increased rate case, which was the 6 cent case, weren't you criticized for deferring maintenance?

(The Witness) That was a question of expenditure of money on rails and ties and things of that kind.

(Mr. Clark) That was a question of labor too wasn't it?

(The Witness) That was later than 1916.

(Mr. Clark) I know, but it covered the period of 1916?

(The Witness) No, it didn't. It covered 1917, '18 and '19, when the United States itself got into the war.

(Mr. Clark) Didn't you start to defer maintenance in 1916?

(The Witness) I wasn't here. I don't think they did. There wasn't so much deferred maintenance.

(Mr. Clark) About fifty some miles of track?

(The Witness) That's what they counted should be done, but some of that track isn't done today yet. It's track that can be kept going.

Q. Now, taking the totals of the exhibit, or the exhibit as a whole, does it show any unreasonable growth in expense, or what does it show? A. It shows, if you put those two together, it shows an increase of fifteen per cent. I was going to check that up, but in the increase in car miles and revenue passengers I think you will find it will run about the same way, Mr. Howard.

(Mr. Clark) I assumed that. That's the reason I didn't go to the trouble of including revenue passengers in there.

(The Witness) That's all the proof that is necessary. There was a question of criticism at one time of 1926, and I had a statement prepared. At that time revenue passengers increased 26.3%. Mr. Waters just shows me there is a difference of 12.44 in car miles during this period, but in 1917-'26, with an increase in passengers of 26.3%, we increased our seat miles 21%, we increased our track mileage only two per cent., we increased our car miles 12.2 per cent., we increased the transfers received 6.4, we increased our seat miles per revenue passengers 6.1, and we increased our percentage of double truck cars 56 per cent. We got that up simply to answer the statement that was made that our service today was worse than it was, I think some person said in 1913, but I can hardly see how it can be when we have 56 per cent. more double truck cars than we had then, we are giving 6.1 per cent. more seat miles per revenue passenger, we are giving 37 per cent. more transfers, we are giving 31 per cent. more seat miles, we are giving ten per cent. more car miles, so that it seems to me these comparisons are getting so far back they are rather not helpful.

(Examination suspended.)

NOTE: At 4.00 o'clock P. M. the Commission then adjourned until Wednesday, November 30th, 1927, at 10.00 o'clock A. M.

SIXTEENTH DAY.

(Mr. Howard) We have two witnesses who have engagements late and we would like to suspend Mr. Emmons' examination to hear them. They are both short.

Thereupon—

JAMES C. FENHAGAN,

a witness of lawful age, produced on behalf of the applicant, in rebuttal, having first been duly sworn according to law, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Markell:

Q. Mr. Fenhagan, what is your business and how long have you been engaged in it? A. I am a member of the firm of Robert Garrett & Sons, Investment Bankers and have been such since 1911.

Q. Now, will you tell the Commission in a general way the nature of your firm's business? A. The buying and reselling of investment securities, including public utilities, railroads, municipals and industrials.

Q. You mentioned public utilities. Can you say any more about that scope of your business in public utilities or does it include all branches of public utilities? A. Oh, yes. Power, light, railways, both urban and interurban.

Q. Before the war I imagine it included a good deal more street railways than it does now, didn't it? A. Yes.

Q. Are you familiar with the returns that investors expect on various classes of securities and on various properties in which they invest their money for securities and stocks? A. Well, we have to be in the merchandising of securities. If we make a mistake we made a bad purchase.

Q. And you have to make a study in that business.

What in your opinion would be the lowest rate of return that such a company as the United Railways & Electric Company should be permitted to earn on the value of their property in order to make that return equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties?

(Mr. Clark) That's a matter of law.

(Mr. Tingley) I will be very glad to have that answered?

(Mr. Clark) The Supreme Court thinks that's a matter of fact.

(The Chairman) Answer it Mr. Fenhagan?

(The Witness) In my opinion its certainly not less than 8%.

Q. Will you tell the Commission in your own way what you consider to be the outstanding elements of risk and the advantages and disadvantages in a utility business that lead you to the conclusion that at least 8% would be necessary to attract capital to such a business?

(Mr. Clark) Now, you say utility business. Are you speaking of the street railway industry or generally?

(Mr. Markell) I spoke generaly but I will specify the street railway industry before I get very far Mr. Clark.

(The Witness) Will you repeat the question?

Q. Now, will you tell the Commission in your own way, what you consider to be the outstanding elements of risk and the advantages and disadvantages in the utility business generally and in the street railway business particularly that leads you to the conclusion that at least 8% would be necessary to attract capital to such a business? A. The outstanding advantage I should say that a street railway usually has, was up until the time of the war, a practical monopoly. The advent of the automobile has very much changed that. The disadvantages are of course an income that is limited on the maximum side

but not on the minimum. I don't understand the scope of the question exactly Mr. Markell.

Q. You have just mentitoned the fact that the return is limited on the maximum side and not on the minimum side. Explain to the Commission the practical bearing on that in the street railway business particular? A. Well, since the establishment of Commissions of course the street railways unlike many other industries, are limited in the amount they can charge, irrespective of the fact that the purchasing power of the money they receive may be and is much less than it was.

Q. Looking at the recent history of street railway companies, tell the Commission what you have to say as to the financial risk involved in the street railway business as compared with the same business before the war? A. Well, the financial history of the street railways of the country before the war shows far less prosperity than it did before that time.

Q. Before the war what class of utility securities would you say ranked highest with investors? A. Well, the Power Securities, have always, certainly for the last fifteen or twenty years, been the favorite. You would have to go back sometime to find a change in that condition.

Q. You can go back to the point when the Street Railways securities were regarded much higher than the power securities? A. Yes, but it's a long way back.

(Mr. Clark) When? In your life time?

(The Witness) Oh, yes, in my life time. Certainly.

Q. Now, Mr. Fenhagan, will you just give the Commission in your own way the reasons for the opinion that you have expressed that at least an 8% woud be a necessary return to attract capital in such a business as the street railway business? A. Well, a street railway, to be properly financed, I would say would have to be financed not more than 60%, and preferably 50, though none of them get to that nowadays, on bonds, the balance on stocks, either preferred or common.

(Mr. Clark) I beg your pardon, did you limit that to street railways?

(The Witness) I was asked the question in regard to street railways, Mr. Clark, I think.

(The Chairman) 60 on bonds and 40 on junior securities?

(The Witness) Yes, sir.

(Mr. Clark) And your answer was in response to his question regarding street railways?

(The Witness) Yes, sir. Very difficult under any conditions to float a street railway security now because the record of the earnings, either of individual companies or of the industries, as a whole, have not showed sufficient margin of profits to make an investor feel safe in his holding of that class of security. Therefore, I would say that most of the common stock, have gotten into a very speculative situation.

Putting it in another way, the lack of earnings of the railroad, has made it more expensive for them to finance because of that history.

Q. So that that's true of the industry generally? A. Undoubtedly.

Q. Not merely of any particular company? A. Undoubtedly.

Q. Mr. Fenhagan, I hand you an exhibit which has not yet been offered in evidence, but which will be offered in evidence today, which is entitled, "Statement showing the cost of financing by the United Railways & Electric Company and its subsidiaries, covering the period from 1920 to 1927."

I will ask you to look at that exhibit and make any comment that you have to make as to how that experience of the United compares with what you have just said about street railways. Whether that's out of line or in line with the general situation? A. No, I should say it's quite in line with the general situation. The general impression I get from this tabulation is that it's costing the United Railways or did cost them more in 1927 to finance than it did back here on the same class of securities in 1922.

Q. That isn't out of line with the situation of street railways? A. No.

Q. Of course it isn't true of many other businesses? A. No, it isn't true generally.

(Mr. Clark) You say it cost more in 1927 than in 1922?

(The Witness) I saw those two dates because they are a similar class of security.

(Mr. Clark) They are the two dates you used?

(The Witness) Yes.

(Mr. Markell) If the Commission please, an ordinary exhibit would be offered through Mr. Emmons, but I think it is convenient to offer it in evidence now and we will offer it in evidence to be marked Exhibit No. 31.

NOTE: Statement above referred to is here filed in evidence and marked Applicant's Exhibit No. 31, rebuttal.

(Mr. Markell) The witness is with you gentlemen.

CROSS-EXAMINATION.

By Mr. Tingley:

Q. Mr. Fenhagan, when you speak of the risk which is encountered by public utilities and particularly street railway companies, in their limited earnings, isn't it also true that they are protected by Commission regulation from petition? A. Mr. Tingley I would say that we all thought they were, but of course as I said just a while ago, the advent of the automobile has changed that a great deal.

Q. You mean the private automobile? A. The private automobile, yes.

Q. Not competing bus lines? A. I wasn't thinking of that as much as of the private automobile.

Q. They are protected from competing railways and bus lines? A. Yes.

Q. Mr. Fenhagan, are any street railway properties

being built at the present time to any extent? A. To any extent, no. I tried to think of any. I don't know of any at the moment. There may be some Mr. Tingley.

Q. Any extensive security issues being floated at the present time by street railway companies? A. No.

Q. How would you account for that fact? A. No.

Q. How would you account for that fact? A. Well, the history as I said just now, I think the history of the industry, and the risk of the industry in the minds of the investor.

Q. How do you account for that situation obtaining throughout the country as distinguishable from the situation of other public utitlities? A. Well, I think this. It has always seemed to me that it was more difficult to get away from the five cent unit in spite of the fact that the five cent piece, the five cent unit is not worth nearly so much today as it was, than in corresponding cases in other public utilities where they may have charged, a Power Company may have charged a certain amount per KWH which hadn't the same fixed unit value in the minds of the public. It was easier to change.

Q. Why do you think it's hard to get away from the five cent unit? A. I suppose it's a little matter of psychology, isn't it.

Q. Isn't it because the five cent unit was the value of the service in 1913, before the war and generally accepted by the industry and the public generally? A. Probably it was the value of service at that time.

Q. Do you think that value of service exercised any effect upon the rate of return earned by the street railway companies?

(Mr. Clark) I think Mr. Tingley is using an expression familiar to us, but——

(Mr. Tingley) It's familiar to Mr. Hoyt.

(The Witness) Perhaps I don't understand it Mr. Tingley.

Q. Let's put it this way. You don't know whether there is a legal principle of service value which affects street railway returns or not, do you? A. I am afraid I still don't quite understand the theory of that question.

Q. I mean this. Does the worth of the service to a customer exercise a larger affect in determining the return of street railway companies, than it does those of other public utilities? A. I don't see why it should.

Q. You don't know that it doesn't do you? You wouldn't say whether it does or not? A. It seems to me they are very comparable.

Q. Have you heard the testimony of Mr. Hoyt in the Gas Company case of 1915, which was made a part of this record? A. I am familiar with it.

Q. Do you recall that Mr. Hoyt thought that value of service should exercise an effect on the return of the United Railways & Electric Company.

(Mr. Markell) He didn't say so.

(Mr. Tingley) That's a matter of record Mr. Markell.

(The Witness) I have not enough familiarity with that testimony Mr. Tingley.

Q. If Mr. Hoyt did say that would you disagree with him, Mr. Fenhagan?

(Mr. Howard) I don't think you have explained to Mr. Fenhagan what you mean by value of service to the customer.

(Mr. Tingley) I don't think he understands it Mr. Howard.

(Mr. Howard) I don't think it's fair to pursue a question to the witness when he doesn't understand it.

(Mr. Tingley) I won't pursue it any further because I think it's clear in the record.

Q. (By Mr. Tingley) How many street railway companies in the country, do you know of that are earning 8% at the present time on their valuation? A. I haven't

made a sufficient check close enough to know. I don't think a great many of them are.

Q. Do you know any of them that are? A. Off hand I haven't any in mind.

Q. Do you know any that are earning 7% of their valuation? A. I should say there are very few if any.

Q. How many do you know of that are earning 6? A. Now, you are pinning me down to tables and I will have to entirely check up.

Q. Assuming that it's true that probably very few street railways companies are earning as much as 6% on their valuation, how would you account for a situation of that sort? A. I would think the fact that there are so few earning eight or seven per cent. on their value is the fact that makes street railway securities so unpopular today and puts them in a different investment class.

Q. Now, you say unpopular today. What was the general rate of earnings of street railway industry before the war? A. Are you pinning me down to actual figures? I can't give them to you. Much greater than it is today in a general way.

Q. What would you say it was in percentage? A. I prefer not to make any estimate without checking up.

Q. How radically would you say the situation had changed as to rate of return since 1911? A. One fair measure would probably be the different measure of the purchasing power of money.

Q. Yes, we think that it is. Mr. Fenhagan, if it is true that during that entire period the street railway industry has been earning a materially lower rate of return than was earned by all other utilities, would you think that was due to the management, of indifference to their stockholders or some other reason for it? A. A very decided economic reason.

Q. You would think there was some underlying economic reason for it? A. I would.

Q. Now, in the opinion which you have given on Ex-

hibit No. 31, that's of course based on the assumption that the figures shown in the exhibit are correct? A. Yes.

(Mr. Tingley) That's all.

CROSS-EXAMINATION.

(Continued.)

By Mr. Clark:

Q. Mr. Fenhagan you have spoken generally of the street railway industry. I want to ask you two or three questions concerning the United of Baltimore. What did you say concerning the 60% net ratio? A. Well, I said that a fair ratio for raising capital for a street railway would probably be 60% in bonds.

Q. 60%? A. Yes.

Q. In bonds, I presume you mean debts? A. Fixed obligations of the company.

Q. To what extent do you bankers, in analyzing a property, give consideration to values other than the physical value? A. We give a great deal of consideration to the earning power.

Q. But with respect to the value of the property, you don't give much consideration to what we know as intangibles? You look to the physical value, don't you? A. Yes, to an extent. Our judgment of the physical value has very little effect as to your security, comparatively little effect on your security if the company is earning no money. In other words if the bond holders have to cease the property.

Q. But answering my question you give very little weight to non-physical or intangible values when you come to look at the value of the property that you are analyzing. You look at the value of the physical property? A. We do look at the physical property, yes.

Q. Do you know what the ratio of the Commission's value given to the physical property of the United is to its debts? A. Off hand I don't. I saw the figures.

Q. You don't know then that the debt of this property is about eight million now in excess of its physical value?

(Mr. Markell) What does physical value mean? That hasn't any meaning?

(Mr. Clark) Nobody knows what physical value means.

(Mr. Markell) No, you use your own way peculiar to you.

(Mr. Clark) That is the value outside of going concern and franchises. The value of the property.

(The Witness) No, wait a minute, Mr. Clark?

(The Chairman) You also include in that going concern value, overheads and all that sort of thing. I suppose, Mr. Clark, such things as the Commission allowed beyond the bare bones of the property, the rails and cars and power house and wires.

(Mr. Tingley) You mean physical property, don't you, Mr. Clark?

(Mr. Clark) I mean the physical property in place and in operation.

(Mr. Howard) You can't have physical property in place and in operation without having these other elements in it.

(Mr. Clark) I think Mr. Fenhagan understands me when I say the physical property of the United Railways?

(The Witness) You mean a scrap value or a going value or what?

Q. No, we haven't given scrap value in the physical property of the United. We have valued the property of the United in pace and in operation.

(Mr. Markell) Who do you mean by we?

(Mr. Clark) I mean the public agency of Maryland. The Public Service Commission of Maryland.

(Mr. Howard) You mean the value of the property exclusive of going value and easements?

(Mr. Clark) Yes, sir, I have so stated.

(The Witness) Mr. Clark, I would think any banker, in buying bonds of the United or any other property, would lay a great deal of stress on the valuation placed there by the Public Government Agency, whatever that might have been, but that would include something more than the bare rail and track, etc.

Q. Of course you take a good many things into consideration, you take the physical value, you take the entire value, you take the value as shown by the books of the company as well as regulated by the Commission and the market capacity and output and a number of things in analyzing its security? A. Quite so.

Q. But my particular question was limited to the question of how much consideration you gave in analyzing a property, how much consideration you gave to values other than physical values? A. We would have to give consideration to all factors. Its very difficult to differentiate between the amount of value you put on one piece of rail and the amount of value you put on your franchise and other things.

Q. Mr. Fenhagan, excluding easements, are you familiar with the fact that the Public Service Commission has placed a valuation on the United Railways property of $70,000,000.00? A. About that, yes.

Q. And you are familiar with the fact that in that $70,000,000.00 is included about eight and a half million dollars assignable to going value? You are familiar with that? A. Yes.

Q. Now, are you familiar with the fact that the debt of the United Railways the fixed debt of the United Railways is about $70,000,000.00 today? A. You are speaking of the entire debits, the income bonds and everything else?

Q. Yes? A. About that, yes. I haven't the exact figures. I assume you have the figures there.

Q. I am speaking of round figures. They are about the same. To what extent if any does that affect the credit of the United Railways among the bankers? A.

Mr. Clark, there are a number of elements entering into the judgment of a banker on a property. That would have some effect.

Q. It would have a great deal effect, wouldn't it? A. Yes.

Q. If the debt of the company equals the valuation given by the regulating body of the State?

(Mr. Howard) Is that a fair question?

(Mr. Clark) I think so.

(Mr. Howard) The debt of the company equals the valuation given? Valuation of what?

(Mr. Tingley) Valuation without easements.

(Mr. Clark) I am speaking now of the $70,000,000.00.

NOTE: Question here re-read by stenographer as folows:

"Q. If the debt of the company equals the valuation given by the regulating body of the State?"

(The Chairman) Do you mean Mr. Clark, the value given, less easements and going value?

(Mr. Clark) No, I am speaking of the $70,000,000.00. That's less easements.

(Mr. Markell) But you didn't say that?

(Mr. Clark) The valuation as it stands at the present time, because the question of easements is still open.

NOTE: Questions and answers here re-read by reporter as follows:

"Q. Now, are you familiar with the fact that the debt of the United Railways the fixed debt of the United Railways is about $70,000,000.00 today? A. You are speaking of the entire debts, the income bonds and every thing else?

Q. Yes? A. About that, yes. I haven't the exact figures. I assume you have the figures there.

Q. I am speaking of round figures. They are about

the same. To what extent if any does that affect the credit of the United Railways among the bankers? A. Mr. Clark, there are a number of elements entering into the judgment of a banker on a property. That would have some effect.

Q. It would have a great deal effect, wouldn't it? A. Yes.

Q. If the debt of the company equals the valuation given by the regulating body of the State.

(Mr. Howard) Is that a fair question?

(Mr. Clark) I think so.

(Mr. Howard) The debt of the company equals the valuation given? Valuation of what?

(Mr. Tingley) Valuation without easements.

(Mr. Clark) I am speaking now of the $70,000,000.00."

NOTE: Question here re-read by stenographer as follows:

"Q. If the debt of the company equals the valuation given by the regulating body of the State."

(Mr. Markell) That isn't a fact. It's a valuation less easements.

Q. Valuation less easements? A. My answer there would be that again a banker would take very largely into consideration the valuation of those easements and the power of the company to earn money on its securities.

(Mr. Tingley) You wouldn't take into consideration the value of the easements if it hadn't been fixed would you Mr. Fenhagan?

(The Witness) Probably not.

(Mr. Tingley) Taking that exhibit, Mr. Fenhagan, of the company, which was shown you, Exhibit No. 31, the fourth from the last column on the right hand side, is cost of money to the company?

(The Witness) Yes.

(Mr. Tingley) That shows doesn't it, that in July, 1920, the cost of an issue to the company was 9⅜%?

(The Witness) Yes.

(Mr. Tingley) And a figure for an issue in 1921 was 8.70%?

(The Witness) Yes.

(Mr. Tingley) And for 1922 6.75%?

(The Witness) Yes.

(Mr. Tingley) For another issue in 1922, 6.60%?

(The Witness) Yes.

(Mr. Tingley) For an issue in 1922, the same year, 7.27%?

(The Witness) Yes.

(Mr. Tingley) For another issue in 1924, 6.93%?

(The Witness) Yes.

(Mr. Tingley) For an issue in 1927, 7.32%?

(The Witness) Yes.

(Mr. Tingley) Now, the next column to the right, "Marked Yield," doesn't that show a decline from 8% in 1920 to 6.28% in 1927?

(The Witness) Yes, Mr. Tingley. The answer to that is partly involved in the situation that we are in a rather desperate financial condition in this country in 1920. Money exceedingly tight.

(Mr. Tingley) Yes. That would indicate wouldn't it that yields of securities generally are lower at the present time than they were in the immediate post-war period when this financial stringency was felt?

(The Witness) With the risk equal, yes. It was not true as to street railway properties.

(Mr. Tingley) If the exhibits in the case show that the company at the present time, that money is costing

it less than in 1920, you wouldn't give the same answer would you?

(The Witness) Would you repeat that question?

NOTE: Question here re-read by reporter:

(The Witness) My answer to that would be, that if the credit of the company was equally as good today as in 1922, or whatever date you took, it should cost less to finance. Securities should be selling at a higher figure and lower yield.

(Mr. Markell) Mr. Tingley has called your attention to two facts, one that street railways generally are not now earning a fair return, and the other that street railway companies are doing practically no large financing, at least there is no construction being done. Will you tell the Commission what relation the second of those facts have to the first if any in your opinion?

(The Witness) A very decided relation, because it's almost impossible to finance a new street railway today as far as any public financing goes.

(Mr. Markell) Does the experience of the street railways in that respect have any bearing on your opinion as to the inability to attract capital by such returns as the street railways have been getting in the last few years?

(The Witness) Why certainly.

CROSS-EXAMINATION.

(Continued.)

By Mr. Toole:

Q. Mr. Fenhagan you were speaking of the risks of street railways. What risks do you mean? A. Risk of default from an investor's standpoint, Mr. Toole.

Q. Will you make that a little clearer? I am not such a financier as these other gentlemen? A. When an investor buys a bond he wants to be sure that he is going to get his interest to make him safe and his principal at maturity.

Q. But after they have bought the bonds already, what risks do they run? Haven't they got them? A. Well, sir, it's always possible to sell a bond if it's a good bond. If it isn't a good bond they can't sell it. That's the answer.

Q. But after the railways have sold $70,000,000.00 of bonds, who runs the risk then? You are talking about the risk of the bond holders and not the railways company?

(Mr. Howard) Mr. Toole means that such risk as there is is of the present security holders. Passes the buck to the security holders.

Q. Now, don't you think they were on notice when they bought those bonds? A. On notice of what?

Q. Of the condition of these bonds, the nature of the property? A. Well, I would say that some of those bonds were put out a good many years ago. The man who could have foretold at that time what was going to be the trend of events in the street railway industry would have been far wiser than any one I know.

Q. Now, because these investors made a bad guess, do you think now that the people of Baltimore should be mulcted to make up, to give them what they think they ought to have got about twenty years ago? A. The word mulcted would certainly lead me to answer no, but I wouldn't say a man was being mulcted because he were being asked to pay more today for a street railway service as he is being asked to pay more in almost every other line of activity.

Q. That wasn't quite the answer that I wanted. Let's put it another way? Suppose the value of these bonds would have gone up? A. Yes, sir.

Q. And instead of being as you say a risk, they would have been gilt edge, so to speak, would you have thought it proper then for the bond holders to have paid back to the people of Baltimore the surplus over and above what they paid for them? A. No, Mr. Toole, certainly not.

Q. Then why should the people of Baltimore pay when the value has fallen down?

(Mr. Tingley) It's a one-way gamble, Mr. Toole.

A. Because Mr. Toole, a bond holder is a creditor. He is limited as to the amount of income which he can get out of that security and he is entitled to just that income. If I have or you have someone's promise to pay you expect that amount.

Q. I know, but if those bonds are worth more, he could sell them and get a bigger price and invest it and get a bigger price in the proceeds, couldn't he? A. Quite so. That's a condition of the market trend.

(Mr. Howard) You mean suppose the bond becomes worth double its par value, don't you?

Q. Don't you think, Mr. Fenhagan, that investors should take the natural result of their acts? A. Just what do you mean by the natural results of their acts?

Q. When a man goes into the market and buys, if he makes a profit he wants it, don't he? A. When a man is buying bonds he is trying to put his money out on interest.

Q. And if those bonds go up he wants that increased value? A. That's a secondary consideration. The first consideration is the safety of his principal and interest.

(Mr. Howard) Can he ever get more than his principal and interest?

(The Witness) At maturity, no.

Q. Of course, but if the value goes up he is in position, while he can't get any more interest on his bonds, he can sell the bonds and get more interest on what he re-invests, can't he? A. Just the same as if he buys sugar today at 2c a pound and it goes up to 3c because of economic conditions he has made a profit.

Q. What I am trying to get at is by what code of morality, do you justify calling on the people of Baltimore to pay for the bad judgment of investors? A. Mr. Toole

when you get down to a discussion of the realms of morality, it might take a long while.

Q. You mean that business and morality don't go together, is that the idea? A. No, but I don't think the question of morality was up. We are dealing with an economic rather than a moral question.

Q. If you can get it, get it?

(The Chairman) I think that this is entirely irrelevant.

(Mr. Toole) Mr. Chairman, that may be, but that's the way the people on the street are talking. The people that's got to pay this difference if any.

(The Chairman) The question before the Commission is whether the United Railways is entitled to an increase in the rate of fare, whether they are entitled to it as a matter of right. Now, the feeling about the matter, disinclination to pay an increased fare and things of that sort, have no bearing on the case whatever. Of course, nobody wants to pay an increased fare. Nobody wants to pay any more for anything than they have to pay for it. The question is a matter of right and wrong, absolutely the right of the company to have it. If the company is entitled to it as a matter of right and as a matter of law, they will get it, and if they are not entitled to it as a matter of right and as a matter of law they will not get it, and this question of morals and whether the investor who buys a bond that goes up has any rights in the matter or whether he buys a bond that goes down has nothing to do with this case at all as I see it.

(Mr. Clark) You have spoken several times of earning power as an important factor in analyzing the securities of a company. Just how do you determine that? Where do you look in the operations of the company to determine that.

(The Witness) In their published statement.

(Mr. Clark) You look in their published statements, at what point?

(The Witness) At the earnings, net income of the com-

pany applicable to the payment of the interest on its securities whatever they may be.

(Mr. Clark) That's the gross income. Then you look at the ratio of profit to total earnings.

(The Witness) Fixed charges. Profit to total earnings.

(Mr. Clark) Gross income to total revenue?

(The Witness) To fixed charges. Not to revenue.

(Mr. Clark) Well, put it another way. The difference between the operating ratio and the total revenue.

(Mr. Howard) You mean you looked to see what the net profits are?

(Mr. Clark) No, I don't mean that, I mean the gross. For example this company earned out of every dollar it collects 26.28 cents. Now, that is the gross revenue from the dollar collected. That's the ratio.

Do you know from your experience in analyzing securities whether that is a fair and reasonable profit in the street railway industry.

(The Witness) That was not the ratio to which I was referring, Mr. Clark, at all.

(Mr. Clark) No, but I am referring to it. If 26.28 cents out of every dollar collected is profit——

(Mr. Howard) Now, is it profit?

(Mr. Clark) Yes, sir, gross profit.

(The Witness) When you say gross profit, before paying interest on their debts.

(Mr. Clark) Just before paying interest.

(The Witness) Isn't the interest on the debt just as much something to be paid as the payroll.

(Mr. Clark) Absolutely.

(The Witness) Yes?

(Mr. Clark) Is that where you look then in order to de-

termine the earnings? The net earnings or the gross?

(The Witness) The ratio of which I spoke was the gross income in its reference to fixed charges of the company.

(Mr. Clark) As a matter of fact, with respect to the United in Baltimore, isn't it the earning power of the United in a city like Baltimore that gives it the credit it has?

(The Witness) Its earning power, very largely, or lack of earning power the reverse.

(Examination concluded.)

Thereupon—

DR. JACOB H. HOLLANDER,

a witness of lawful age, produced on behalf of the Applicant, in Rebuttal, having first been duly sworn, according to law, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Markell:

Q. Dr. Hollander, you are the Professor of Economics at Johns Hopkins University? A. I am.

Q. I suppose it's hardly necessary in Baltimore to ask Dr. Hollander to explain his qualifications?

(Mr. Tingley) Certainly isn't so far as I am concerned.

(The Chairman) Dr. Hollander's qualifications are admitted.

Q. Dr. Hollander, the contention has been made, you have already heard it suggested this morning, during Mr. Fenhagan's testimony, that before the war five cents was a reasonable sum to pay for a car ride, but that to pay ten cents now would be to require a man to pay more than a car ride is worth to the customer.

I want, without going into details, in the matter, to

ask you to explain to the Commission, in your own way, having reference to the value of money before the war, and the value of money now and the standard of living and the level of wages, and the capacity to pay, whether or not, assuming a car ride to be physically the same thing now, as it was in the old days, 30 years ago, or 15 years ago, a customer would get as much for a ten cent piece now, as he got for a five cent piece before the war, looking at it subjectively as you might say, in the worth of the service to the customer? A. If I understand your question, sir, it is that we assume that a five cent fare in 1913 gave the customer a fair return in value, and if that be so, assuming no change in the quality of the service, does a ten cent fare now. That leaves the question turn upon the relative burden of five cents for the same service in 1913 and the ten cents in 1927?

Q. That's the point I would like you to explain? A. I merely repeat that so I might be sure I have in mind the same thing that you have.

That would depend upon the income of the consumer. Now, the income of the consumer, and in particular of the wage earner, has increased from 100 to approximately between 200, let us say, and 235, so if that is the typical consumer, a withdrawal of five cents from an income represented by 100 would be more of a deprivation than a withdrawal of ten cents from an income represented by let us say, taking the lower estimate of 220. That rests upon the facts as to wages which would be probably the typical income of the customers of the street railway.

Q. Will you tell the Commission what data are obtainable from which you express that opinion as to wages? The figure 220 and 235? A. Yes. The statistics of wages in the United States have never been compiled in the way that the prices of commodities have. We are dependent for any exact knowledge upon first the collection of facts as to rates of wages in Union industries in a series of cities among which is Baltimore.

In the second place upon the earnings of workers in representative establishments of New York State, collected by the New York Bureau of Labor statistics.

Third by computations made by certain accredited authorities, such as the staff of the Federal Reserve Bank of New York, and the National Industrial Conference Board, a very influential body of manufacturers in the United States who are not biased or influenced.

Now, if we take those up in order for example, here is the computation as to the rates of wages per hour for 835,000 members of organized trades located in 66 of the principal cities of the United States as of May 15th, 1927.

That shows that the rate of wages per hour in 1913 was 100 and in 1927 down to date was 259 and a half. In 1926, 250.

Now, if we turn to Baltimore, which is one of those cities, the figures are in 1913, the particular industries would be something like this; brick layers, 62½c in Baltimore in 1913, $1.62c in 1927. I am taking that in the order in which they come. Where Baltimore is not for some reason included, I have taken Cincinnati.

Building labor 20c in 1913, 60c in 1927. Carpenters, Baltimore, 43.8c in 1913, $1.10 in 1927. Cement finishers, 50c in 1916, which was the first available figure, $1.25 in 1927, and so on running thru the entire list of industries.

(The Chairman) Have you common labor there?

(The Witness) The nearest I had to it, without any reflection upon how common it is, would be hod-carriers. Would that service your purpose? But that's a skilled trade I suppose.

(The Chairman) Well organized.

(The Witness) These are all organized industries. Now, those are all the collections made by the United States Bureau of Labor Statistics and they serve to bear out the estimate of at least 225.

Now, in regard to the average weekly earnings in representative New York State factories includes all employees in both office and shop. We have there, based

on 1914, as 100 an increase from $12.48 in 1914 to $29.02 in 1926, and $29.57 for September, 1927.

That has the advantage over the preceding figure of giving not merely rates per hour, but actual earings per week.

From that we turn them to the collections made, not under direct Governmental authorities but by such agencies as the Federal Reserve Board, and that shows a result that corresponds very closely thereto. The index of wage increases, which is here collected by Mr. Carl Snyder, the Chief Statistician of the New York Federal Reserve Bank, is a wage index, that is to say all kinds of wage receiving classes are included and given an importance relative to their numerical proportions.

Q. Would that include common labor? A. Yes, these are the weights given. Agricultural wages five, railroad ten, professional five, factory forty, building fifteen, clerical fifteen, unskilled ten. It's a very comprehensive figure of the wage receiving class, and that would show for the last period, which would be the middle of 1926, since which there has been no revision, a figure practically 200, and the unskilled labor is differentiated here, and runs substantially above 220. Probably near 230.

Q. The base is 1913? A. 1913, 100. I have the exact figures here. The last figure for the entire group is December, 1926, 222.

(The Chairman) Before you leave that will you take agricultural labor?

(The Witness) Yes, average prevailing farm wage rate, per month, without board, 1913, is equal to 100 and was $30.21. Now, the last figure available is $50.10 for October, 1926.

(Mr. Toole) Have you the same figures for unskilled labor, Doctor?

(The Witness) Now, for unskilled labor, average weekly earning rate for unskilled labor in second Federal Reserve District, the last figure which I have here is for January, 1927, 220 $24.02.

(Mr. Toole) Now?

(The Witness) No, I haven't anything later than January, but I think it's been admitted there has been no weakening in that wage trend.

(Mr. Sobeloff) What is that compared with?

(The Witness) With 100 for 1913.

(Mr. Toole) Where is the Second Federal Reserve District?

(The Witness) New York.

(Mr. Toole) New York City?

(The Witness) New York State as a whole.

(The Chairman) Have you got a corresponding figure for unskilled labor in Baltimore?

(The Witness) No, we only have the Bureau of Labor Returns, which are of union rates, but, sir, I think it is a safe statement to make that unskilled labor has kept up with the general trend of skilled labor, except in a few highly favorably placed building trades such as the plasterers for example, but that the ordinary grades of unskilled labor, have been consequent probably upon the restriction upon immigration in a more favorable position than most of the skilled trades.

(The Chairman) The figures you have given are, do you say, from the Second Federal Reserve District.

(The Witness) Yes.

(The Chairman) Which takes in the whole of New York State.

(The Witness) New York State. It simply happens that the second reserve district has had the staff to make this computation.

(Commissoner Purcell) Doctor, you gave a figure of 220 resulting from giving certain weights to various classes?

(The Witness) Yes.

(Commissioner Purcell) Have you the figure corresponding to that, applying particularly to Baltimore City?

(The Witness) The weighting, sir, was in connection with the New York district, the Federal Reserve Figures.

(Commisisoner Purcell) You have no corresponding figures for Baltimore?

(The Witness) No, and represented a weighting corresponding to the relative number of different classes of labor.

(Mr. Toole) Isn't it true, Doctor, that wages are generally higher in New York State than in Baltimore City and Maryland?

(The Witness) Yes, sir, but I suspect that was the case in 1913 as well.

Q. Have you any reason to think that the change from 1913 to date would be any less in Baltimore than in any of the other figures that you have given? A. No, for the reason that the increase in the cost of living in Baltimore is very much on a plane with the increase in the cost of living in other cities, and you would say, therefore, you would be prepared to expect a movement in wages corresponding.

Q. Now just at that point, Doctor Hollander, there has been offered in evidence in this case certain figures, or have been offered in evidence in this case, certain figures as to the Bureau of Labor, General Commodities price index, and one of the exhibits offered characterized that as cost of living. Will you tell the Commission whether that price index is the cost of living index, or what's the difference betwen the two terms?

(Mr. Howard) The exhibits referred to are People's Counsel Exhibits No. 22 and 23. A. My statement would be clearer if I might have the chart which I have prepared.

NOTE: The Commission then adjourned for a short recess.

AFTER SHORT RECESS

NOTE: Previous question here read by Reporter.

A. The most authentic and most commonly used indices of prices and of cost of living are those collected and tabulated by the United States Bureau of Labor, and there are three of these, the one of Wholesale Commodities, the second of Retail Food and the third of Cost of Living.

The wholesale commodities and the retail food are collected monthly, the cost of living quarterly up to within the last year or so, since which time it has been published only semi-annualy.

This chart shows the three. The black line as marked is the wholesale commodities, relative to 1913 and the terminal point of which, here, is virtually 150, the last figure being October in 1927.

The retail food is the red line and that is very close to the wholesale commodities. 154.

The cost of living is represented by the dotted line and the last figure available is July, 1927, and was 173. We should expect the January, 1928, slightly in excess of that because of the upward tendency in recent months of wholesale commodities and retail food.

Q. Dr. Hollander, while you are on that point, I believe you have had occasion to testify some years ago with reference to the price level reflected by the wholesal commodities price index, and other evidencs of price level, and I think as long ago as four years ago you testified as to your own opinion as to the probable stability of the price level. Do you recall what your opinion was? A. I am glad to. I appeared in connection with the valuation case of the Consolidated Gas and Electric and then I think there was more discussion of the trend in prices, as to whether the then prevailing price index was a momentary one, from which there would be a post war drop, or whether it really was the beginning of a new price level. The testimony I gave was that prices are not topsy-like, just happen but are the result of definite economic forces, the volume of production and business on the one

hand and the volume of credit and money on the other and insofar as both conditions and policies were then apparent, it was likely that we were entering upon a period of price stability at or about the then level.

(Mr. Howard) When was that?

(The Witness) That was in March, 1923, and it's rather interesting to find at the end of 1923 the price index was in December, 1923, it was at 150, and in that time you see there have been drops of about 3% and rises of about 6%, but we come out exactly the point in October, November, 1927, where we were in December, 1923, and it is possible to state now with very much greater definiteness what it was then stated with I think as reasonable likelihood all of the tendencies which were then becoming manifest have shown themselves and have attained a new definiteness.

Q. So what would you say now as to the probable stability of prices in the next few years? A. I should renew my forecast with greater emphasis; that prices are likely to stabilize around 150.

Q. Now, Dr. Hollander, that figure is called the wholesale commodities price index? What is that index made up of? Just in a general way, and don't mention all the details. A. The wholesale commodities index, as I have it here, is based on some 400 very carefully selected commodities, covering the whole range of possible expenditures, and giving a weighted importance according to their prominence in the trade of the country, and made and reduced to relative percentages to the year 1913 as 100. Within recent months that has been replaced by a new wholesale commodities index, which enlarges the number of commodities from 400 some to 500 hundred some, gives them a somewhat different weighting. These would only be technical corrections, but the important thing is that the figures are now made relative not for 1913 but to 1926. The interest of that for the purposes which we have been discussing is that 1926 almost would seem to be regarded as a typical base, and 1926 with 150.

Q. That reflects the opinion you have expressed; that about the stable has been reached? A. That, I think, might be inferred from that.

Q. Now you say it's four hundred commodities. Of course, in arriving at the average of these hundreds of commodities, some of the commodities are decidedly higher and some lower than the average of some 150. A. Yes.

Q. Now commodities that directly or indirectly reflect labor to a large extent would be higher or lower than the average, would you say? A. Oh very substantially higher, provided that no factor is present to counteract that.

Q. Either the construction cost or the operation cost of a street railway system would that be normally expected to be higher or lower than the commodities price index? A. I am not an expert in the technique of railroad operation.

Q. In view of the amount of labor involved? A. But I suppose operating costs would be very largely labor, would they not?

Q. Yes. A. Well then certainly it would correspond in a general way to the trend of wages which goes substantially above cost of living.

Q. So that the operating cost of a street railway would be more likely to follow the wage curve than the commodity curve? A. And, of course, you see the significance of this. The wholesale commodity index is designed to show the alteration in the purchasing power of the dollar expended as it were, on all commodities in general, not of any one particular one, but assuming that it was expended on all commodities, and the fact that that index is 150, we will say, as compared with 100 in 1913 is equivalent to stating that the dollar is now 66c. I picture to myself accordingly a man starting out in 1913 with a dollar in his pocket to buy particular things. In the 14 years that have elapsed that dollar we will say has shrunk to 56c and the particular things that he desires to buy may have gone up in addition, so he has gotten it, let us say in that case, coming and going. The money in his pocket has shrunk and the prices of the things that he wishes to buy have increased.

So it would be in the expenditure for labor. There has been a shrinkage in the purchasing power of the dollar,

on the one hand, and owing to factors peculiar to labor the cost of that will have gone up still higher.

Q. So that a man or a corporation is buying labor, or the mere product of labor, not only has to pay more on account of the fall in value of the dollar, but he has to pay more dollars of the same kind than he would before? A. For the commodity which has appreciated intrinsically, in this case labor and conversely if he bought say agricultural products, he would be expending it for something which costs less.

Q. Because those prices have relatively gone down? A. Those prices have gone down.

Q. What would you say of the cost of construction of a street railway system. Would they reflect the labor prices or the lower prices? A. To the extent that labor is the dominant factor, or that commodities enter into it, which have advanced more than the change in the purchasing power, that would be the case and the answer to that resolves itself into an actual computation of construction costs.

Q. Now the chart that you have just referred to goes from 1913 to 1927. The index of the wholesale commodities price of the Bureau of Labor, not only has been constructed as you show it there, but that has also been carried as far back as 1890, hasn't it? A. Yes, certainly that far back, yes, I have here a publication of the Department of Labor showing wholesale prices from 1890 to 1923.

Q. Considering that pubication, giving the figures from 1890 to 1923, this 5-cent fare that we have been talking about didn't begin in 1913, but was in force 30 years ago, say in 1897. Will you tell the Commission how this commodities price index compared in 1913 with back in the '90's? A. Yes.

Q. Will you tell us what that would be in 1897? A. Yes, 63, all commodities, 1897, price series.

Q. That's 63 as compared with 100 in 1913? A. Yes.

Q. Are these other curves carried back to 1897, I mean

the cost of living? Was there any cost of living curve for that? A. I doubt it.

Q. And the wage index wouldn't go back that far? A. I doubt it, and we would be thrown back upon the general economic consideration that retail prices follow in the main after an interval of lag wholesale prices, retail food prices follow wholesale commodities prices, after a lag and wages follow after a lag retail food prices. That has been generally admitted, altho there has been some remarkable modification of it in recent years.

Q. Would you express any opinion as to whether the increase in wages, between say 1897 and 1913 was greater or less than the rise from 63 to 100? A. I would not express an opinion as to that as to the degree. I would say it would have been substantially up to 100, but in the absence of any statistical data, I would not say just what it was. That wages rose from 1897 to 1913 just as wholesale commodities did.

Q. Is there any reason to think they rose any less than wholesale commodities did in that period? A. No reason that I should think of and anything like a precise correspondence could not be given.

Q. The data doesn't exist then? A. No.

(Mr. Toole) Wasn't 1907 the panic year, Doctor?

(The Witness) 1907 was, yes.

(Mr. Markell) Not 1897?

(Mr. Toole) How about 1897?

(The Witness) 1893 was.

(Mr. Toole) We were out of it well then by 1897?

(The Witness) Yes, I think so. 1893 was the great year of the silver.

Q. Now to shift the subject, Dr. Hollander, there has been some discussion in this case about the subject of unemployment at the present time. I will ask you the question generally.

Please state to the Commission to what extent there is

unemployment at present in Baltimore, or in the country, generally and whatever you find the fact to be now, whether or not there is reason to anticipate any less unemployment in the near future, say in the next year or two. A. As far as precise statistical information goes as to unemployment, we in the United States do not possess it, as for example in England, where unemployment is made the condition under which the dole is paid. There are general statements made and opinions expressed and sometimes testimony given by relief societies and so on, but as far as actual accredited statistical information as to the amount of unemployment from time to time and from one locality to another, we do not possess it.

Now that those us back upon certain other criteria and one of these would be the volume of production, and another would be the volume of trade, the inference being that employment and conversely unemployment would be related to the volume of trade or the trend and tendencies in the volume of trade and the volume of production. Now there we are on safe ground, and I think here again, if you will be good enough to put up another chart in which I presented in graph form, the data collected by the Federal Reserve Board as to Production and as to trade, and it will perhaps make clearer what I have to say if I state a conclusion first.

The conclusion which I will wish to reach is that we are not suffering from any acute business depressions as far as the evidence is available, and to the extent that our present business activity is less than a year ago, it marks probably a rebound from a peak to a somewhat lower level, which is more likely to represent the normal degree of business activity.

Now there are really three curves here. The first is represented by this dotted line, which the Government collects the volume of production in some 40 or more basic industries and computes this volume relative to 1919 as 100. That is the line which comes to an end here in 1926 for the reason that at the end of 1926 in December, 1926, further collection of that was suspended and its place was taken by a related computation called Industrial Production. Here again there were technical alterations in

that more industries were taken into account, but the important fact was that it was made relative to the average production of 1923 and 1925, as 100 and it was then carried back by computation to 1919.

Now the last figure available here is September, 1927, which is 106, 6% higher in other words than the average production for three years, 1923, '24 and '25. Now that doesn't mark any period of depression or any period of inactivity. If we want that we come down to things like this (indicating). That marks a very considerable degree of activity above the three years preceding 1926.

Now on the other hand it does mark less activity than the corresponding period a year ago, but the corresponding period a year ago was a distinct peak as you will see, and it's quite likely that that peak was a peak and that we are going to move we are not going to keep up that pace, and we are going to move along a lower plane until we suffer another abrupt increase, so that as far as production is concerned, is the warrant for my opinion that we are not, as far as secure evidence goes, suffering from a period of cessation, or of considerable reaction, and to the extent that we are, as compared with 1926, it's likely to continue along that line until we have another abrupt peak.

(The Chairman) That shows an abrupt drop, does it not, Doctor, along from May, 1927, to September?

(The Witness) In May it was 111. In September it was 106. Perhaps I can read the figures for the months beginning with January.

(The Chairman) I just see by your chart from September it's an upward trend now, as marked as the downward trend was for May.

(The Witness) Yes, now, of course, it remains to be seen what the succeeding months are, but if you take the months of 1927 they are 106, 109, 111, 109, 111, 107, 105, 107, 106. That represents a pretty fair stability on a somewhat lower plane than a year ago, which was distinctly a boom year.

Now when you come to the other criteria. which is the

volume of business and that is mercantile business and merchandising generally and the authoritative evidence of that is the face value of the total checks presented on the banks of the country, outside of New York City, which is complicated by Stock Exchange transactions. Now the face value of all the debits presented to the banks or rather to the member banks of the Federal Reserve System, is regarded as a very fair indication of the degree of business activity.

Now there you have with this top line something of about the same general character. Here for example it showed up that's probably seasonal, to 138 which is as compared with this year, I will read the figures for the months of this year, beginning with January 145, 133, 134, 137, 133, 134, 132, 133, 138. There is no system there of business recession, altho taking into account the passage of a year, this is certainly relatively below the boom activity of 1926.

So contrary tho, it may be to what an individual may suppose or may experience, if we wish to stand on secure statistical ground, it seems to me that there is warrant for the two statements which I make.

Q. Have you any reason to think that those statements that you made on this general statistical information would be modified by any Baltimore condition that you know of? I mean is there any reason why what you say would not be properly applicable to Baltimore? A. I do not see that it should. It might work day by day or week by week, but after all, Baltimore is a cross-section of the general economic activity of the country. It might be that a certain industry is particularly represented, but that isn't what takes place in economic life generally.

Q. You are not aware of any economic condition in Baltimore that would make your general statement inapplicable here? A. No.

(Mr. Toole) Isn't there another factor in that industrial production. Doesn't an increase in machinery come in along there to a great extent, and if there were an increase of machinery, wouldn't you get the same production with less men, and there would be somewhat unemployment?

(The Witness) There has been introduction of machinery, Mr. Toole, but it hasn't been a matter of the last six months. That has gone on very notably as you know in the last six or seven years, but apparently it hasn't operated to the disadvantage of labor, because wages have gone up.

(Mr. Toole) The reason I ask you I think I saw the reports of the Labor bureau, I can't give you the chapter and page in which he says more goods are being produced now with less labor.

(The Witness) Quite so, and relatively there can't be no surplus of labor because wages have advanced. If there were a surplus of labor resulting from a release or the displacement by machinery that would promptly be reflected in a drop of wages, because after all unemployment is the means by which it's shown.

(Mr. Toole) Your figures deal altogether with organized labor. They don't deal with unorganized labor at all.

(The Witness) Insofar as we have figures of unskilled labor, they follow the same trend.

(Mr. Toole) You don't believe then that there has been any reduction in labor in the last year in Baltimore City.

(The Witness) In wages?

(Mr. Toole) Yes.

(The Witness) It isn't a question of what I believe, it's a question of what the facts state, and the facts collected show what has taken place, and of the facts that are not collected, I have no opinion.

(The Chairman) In other words, Doctor, you are not making your statements here on your personal observation of conditions?

(The Witness) None of my statements are made either upon the basis or fact or if they are opinions upon the attempt to apply economic principles to those, but what I have said thus far has been entirely based upon facts. These for example are merely converting columns of figures into graph.

CROSS-EXAMINATION

By Mr. Tingley:

Q. Dr. Hollander, taking your chart No. 1, have you that before you? A. Yes.

Q. Doesn't that show that the cost of living curve at the present time, in 1927, as compared with 1913, is 150 or about that figure? A. No, that's the wholesale commodities.

Q. Where does that show the cost of living curve? A. It is the dotted line. 173. This top line.

Q. Dr. Hollander, the curve representing the increase in wages of labor, particularly of organized labor, would be materially higher than one representing an increase in either wholesale commodity prices or the cost of living, woudn't it? A. Precisely.

Q. Which do you think would be a fair indication of the paying ability of the public at large at the present time?

NOTE: Question here reread by Reporter.

(Mr. Howard) You have three curves in mind in your question, haven't you?

(Mr. Tingley) Yes, sir.

(The Witness) By all means the curve of wages. If I may answer your question a little fully, Mr. Tingley.

We in the last few years have witnessed an economic development that is literally unique in recorded economic experience, and that is whereas prices have dropped, wages, instead of folowing it with a customary lag, have actually increased, so that altho food, for example, has shown this tendency and cost of living, a more moderate tendency, wages have gone up.

Now that has no parallel and is counted by many the explanation of American prosperity, and it means that the American worker by and large has a margin between his cost of living and his actual income, such as has never developed in this country, nor in any other part of the world before.

Q. Dr. Hollander as between the two curves representing the wages paid organized labor and unorganized labor, which would you think was the clearer index to use for the purpose of determining the paying power of the average individual, say the average rider of the United Railways? A. The average rider is a mere mental image. There is no such thing as an average rider.

Q. He is a very real person, is he not? A. No, he is not. There is no such thing as an average rider. The rider is a real rider and he is either one thing or the other.

Q. Are all the riders union laborers? A. No, nor are they all unskilled laborers, nor are they all bankers, nor are they all mendicants.

Q. They aren't all laborers, at all, are they? A. Precisely.

Q. Then would you think that a curve representing an increase in the labor or wages, either organized or unorganized, was a fair criterion to use in determining the change in service value of a street car system? A. I should say it was one of the important factors, but if I wanted to qualify the correctness, then I take up the question of the change in the income of the people of the United States.

Q. United States or Baltimore, Dr. Hollander? A. Of the United States. I don't think the people of Baltimore are very different from the people in the average condition in the United States.

Q. Don't you know that they are, Doctor, as to their average income? A. No, I don't know it and no one else knows it. Now the average income of the people in the United States, since you have raised this point, income for persons gainfully occupied, which means those who first receive wages, salaries and pensions, second traffics withdrawn from business and third dividends, interest and return received by individuals. Now that means that in 1913 all persons who were receiving average income or per person gainfully occupied was $864.00 and in 1926 it was $2,010.

Q. That's the average person gainfully occupied? A. Right. Now that's a nearer picture I should say of the average rider than to passing upon the skilled worker or the unskilled worker.

Q. Neither of them are very close? A. Neither of them are very close because there is no such person. That's what I meant by saying that the average rider was the picture of imagination.

Q. You took as your basis of comparison a five cent carfare in 1913 as representing the value of the service at that time. If the Commission found in January of 1919 that the value of a car ride at that time was six cents, and if you had used six cents instead of five cents in 1919 instead of 1913 your conclusions would have been quite different, wouldn't they? A. Am I to understand that that is a hypothetical question, Mr. Tingley; that if the Commission had, or did the Commission?

(Mr. Markell) We don't think the Commission did for a moment.

(Mr. Tingley) Call it a hypothetical question then and I will undertake the burden to show that it did.

Suppose I read you what they said:

"The authorities of highest repute are practically unanimous to the effect that the public should not be required to pay for a public service more than such service is fairly and reasonably worth, and the cost of rendering that service is merely one of the evidences of the fair worth of the same. This Commission has concluded from the facts before it in this case * * *."

This is January 7, 1927:

"* * * That the fair worth of reasonably adequate street railway service to the community served by the respondent Company— * * *."

That's the United Railways:

"* * * and under existing conditions, is six cents, as the basic rate for adults and four cents as the basic rate for children between four and twelve years of age."

Now Dr. Hollander taking six cents as your basic fare as of 1919 as your basis here, would or not that effect your conclusion which you have reached?

(Mr. Markell) If the Commission please, we have no objection to Mr. Tingley putting Dr. Hollander the hypothetical question that he put. When we come to argue this case, we are fully prepared to argue and explain that we don't think for one moment that the language that Mr. Tingley has read, if you read it in connection with the context of the opinion, and with the Commission's action, and what the Commission said in subsequent cases, we are perfectly satisfied that the Commission did not say what Mr. Tingley construes them as having said.

Now it certainly can't be helpful in this case to ask Dr. Hollander to construe that language of the Commission. We have no objection to his making his own assumption and ask Dr. Hollander to say if the Commission decided in 1919 so and so.

(Mr. Tingley) That's exactly what I have asked him.

(The Witness) I understand the question is now hypothetical. If six cents were to have been stated as the measure of the value of the ride, to the consumer in 1919, would——

Q. Your conclusion be the same? A. I see. I trust I am not guilty of any disrespect to the Honorable Commission, but if they said that in 1919 my answer to that hypothetical question is they said something that was wrong.

Q. That's not answering a hypothetical question. A. Isn't it an attempt for me to answer a hypothetical question which involves what not, in the popular sense but in the logical sense, is an absurdity?

Q. Suppose you assume it to be correct and answer the question, Dr. Hollander?

(Mr. Howard) The question is assuming this, then what?

(Mr. Tingley) Would his conclusion be modified?

(Mr. Howard) Would his previous conclusion be modified?

(Mr. Markell) What conclusion?

(Mr. Tingley) Is there any doubt about that Mr. Markell? Suppose I put it this way. There won't be any difficulty about anybody understanding this.

Q. (By Mr. Tingley) Assuming the six cents was the value of the car ride in 1919, what would you say the present value of a car ride was using either the wholesale commodities index or the cost of living curve, as you use it? A. Mr. Tingley, I haven't the slightest desire to evade the question or to quibble with you.

Q. I am sure you haven't. A. I simply don't want to make answer that will be misunderstood. My conception of the value to the consumer is something like this and this is preliminary to the answer. I shall not forget the question and I will answer it.

There are perhaps two hundred millions or more rides consumed in the course of a year, we will say. Now that covers a wide range, of at the top limit, we will say the ride that has a limitless value to the consumer down to the one that has a very limited utility to the consumer. And that is influenced by first what the fare means to him, second what the occasion for his using the ride and so on. That's what I protested against the inception of an average ride, when you are talking of as subjective a matter as the satisfaction which the ride gives to a consumer.

Now this may not be the legal meaning attached to it, but it is the economic meaning. Now what is the advantage to the man, let us say it to the rider whom we may call the marginal rider, what is the monetary expression——

Q. Doctor would you mind answering the question first and then give your explanation.

(The Chairman) I think the Doctor can go ahead.

(The Witness) Now what is the monetary expression to that? It's easy to use the term the value to the rider,

but the extent that I am acquainted with what the decisions have been on the matter, it seems to me that there is a lack of ability to convert that purely subjective phrase into dollars and cents.

Q. It's been converted into them, Doctor, by the Commissions and Courts. A. Perhaps, I will do best if I continue. Now what is the expression for it, insofar as an economist views it? It is the amount which a consumer pays when he buys anything, shoes or bread or whatnot, he is getting value for what he buys if he pays for it at cost of production with a fair profit, a fair profit we will say on a fair value. He never is obliged to pay more for that because competition enters to keep the price down. He can't in the long run pay less than that, because if he does the business breaks up, so you say a consumer gets a fair value for what he buys if the price which he pays is a fair return on the value of the property.

Well, now, I see no distinction between competitive business and regulated business in the sense that a regulating body, I take it is to exercise for a non-competitive business that same degree of control which competition exercises in the non-regulated business, and therefore I think the monetary expression is the amount of the value of the service to the community and assurance that he isn't paying any more than this fair return.

Now I come to my answer. If the Commission should have fixed six cents in 1919 as the monetary expression of the value to the consumer, it would have been because six cents was a fair return on the value of the property and therefore,——

Q. Let me interrupt just a minute. Are you stating that as a lawyer, or as an economist? A. I am stating it as an economist. I am not a lawyer and I can only speak as I am.

As I say, in 1919, a price was recognized as economically sound and surely no Commission, even hypothetically would utter a decision, which was not economically sound. If accordingly they fixed six cents as the fair return on the value, it would have been for the reason I

have given, and therefore in 1927 the fair price to the consumer would be governed by the same principal. That I think is as near an answer as I can make to your hypothetical question.

Q. Is that the only answer you care to give Dr. Hollander? A. Until the question is modified.

Q. And that answer is based on the assumption that the Company was earning a fair return in 1919? A. My dear sir, the entire question was hypothetical.

Q. Were you assuming that in your hypothetical answer? A. I was assuming that if hypothetically, the price was fixed by a regulative body in 1919 as measuring the value to the consumer that that fare would have been such as would give a fair return on the fair valuation of the property.

Q. It's your understanding that when a Commission fixed the value of the service in a given case, it does it on the basis of a fair return to the utility? A. As one of the elements.

Q. Dr. you assume in your comparison that the character of service, given by the United Railways and Electric Company was the same in 1913 and at the present time, didn't you? In other words, there had been no deterioration of service in the interim? A. I did not make that specific.

Q. It was included in the question and I thought perhaps it was included in your answer? A. It was included in Mr. Markell's hypothetical question.

Q. And you assumed it in your answer? A. Yes. I wouldn't have assented to it. I would have said that the service had improved very materially.

(Mr. Tingley) Thank you very much.

CROSS-EXAMINATION (Continued).

By Mr. Sobeloff:

Q. Dr. Hollander, even assuming the base of 1913 at 100, which you have assumed in your chart and taking into account the rise to 150 in 1927, doesn't the present

fare of 7½c reflect about the same increase as compared with 5 cents in 1913? A. If the expenditures of the Railway were exclusively on wholesale commodities, that would be true, but to the extent that they expend in wages, or labor, it would not be true, or to the extent that they expend on commodities which are above this average commodity. The 150 is attained by some 400 commodities, some of which are above, and some are below. Now if any purchaser has the bad luck to have to buy expensive things he is certainly not compensated by 150.

Q. That same criticism could be made of the chart for the year 1913, could it not? A. Yes, but we are dealing with an increase. We are not dealing with an absolute adequacy. Your question as I understood was assuming starting with five cents is 7½c not that corresponding increase.

(Mr. Howard) They both start at 100 in 1913.

Q. But it would require an enormous study of just what they spend their money for? A. Exactly, except that we may say that one notorious factor, mainly labor, is so much out of line with wholesale commodities that you can answer that.

Q. Interest on the bonds, which is a very large feature in the case, their expenditure, that doesn't change. A. That deals with a measure of computation which are facts of record.

Q. There is one other question I want to ask you, Doctor, just for my own understanding. You have the line cost of living, and I notice that fairly constantly from 1921 on, and that is considerably higher than either the cost of wholesale commodities or retail food. A. Yes.

Q. But that was not the case before? Can you explain that? A. The explanation of that is, that it includes lodging, that is, rent, clothing, fuel and those other things. Now those other things didn't come down in the same way that food came down, so the consequence is that retail food has dropped while cost of living has dropped some, but not as much. Consequently rent wouldn't drop as quickly as groceries, it's slower

and the cost of living includes sluggish elements, so that the composite is slower than the food drop.

Q. But it's been here right along for the last five years. A. Exactly so, but the trend is on the whole something similar you see.

Q. Yes, but it's always higher, whereas you started out at 100 for it. A. You see there was no counter part to this sharp drop in food. You see from 1920 to '22, which was the period of abrupt commodity drop, it was with the deflation that began in 1920 where they went down. Now you notice cost of living went down. That simply repeats the familiar experience that your house rent didn't drop as quickly as the commodities.

Q. It shows no tendency to drop down as low as the other lines? A. That remains to be seen. Here is a curious suggestion of what might happen in the spring of 1927. You will notice that food went up while cost of living showed a tendency to go down, and one's guess would be that ultimately there is a tendency to converge.

Q. For the past five years they haven't gotten any closer? A. I could give you the figures but the absorbing question is, of course, will wages follow that same trend; will wages, as heretofore they always have done, drop as the cost of living. Now if I put the wage curve on this chart, you would find it going up.

Q. Union wages? A. Well, there is no evidence whatever that unskilled, unorganized wages, it's a well known principle in the labor world that unskilled and non-union wages follow in a general way the course of union wages. I should hestitate very much to say that the course of unskilled or non-union wages was contrary to that of union wages.

(Mr. Markell) The index that you cited of the Federal Reserve Board included that kind?

(The Witness) That kind there is really not marked. you can fight over percentages, but the wages of all kind are approximately 220 does not admit of any denial because every economic, critic every financial report, of any competence, proceeds on that and trying to explain

why it is that wages are in excess of cost of living, and the conclusion reached is that the American worker in consequence of increased efficiency of organization has a new margin of expenditure as compared with any other kind.

Q. What was the rate of wages in the peak of 1920 as compared with 1913? Has there been a very great increase since 1920? A. I can answer that exactly. Here I will rely on Snyder where it says the average for 1920 was 207.

Q. Is that the peak? A. That was the peak up to that time and followed in 1921 by a drop to 194.

In 1922 to a drop to 189 and then it's gone on moving, 189, 205, 210, 214, 219, the very time that food and commodities and cost of living have at worst remained constant.

Q. But the wages are not much higher than they were in 1919 or '20 during that peak? A. As 219 bears to 207.

Q. I am comparing it with the time when the other case was before the Commission, in 1919 or '20, just about that time. The wages then were practically as high as they are today? A. See if this doesn't show the extraordinary character of the 1920 movement. In January wages were 192. In December they were 210. It was a boom period, while in 1926, January wages were 217, in December they were 222. There wasn't anything of that abrupt character.

CROSS-EXAMINATION (Continued).

By Mr. Clark:

Q. Doctor, I just want to ask you one or two questions. An important issue in this case is the value or the worth of the ride, and that is the reason for the questions that have been asked you up to the present time. I get your answer to that that the most determining factor in finding that worth is what a man is making, what his income is.

I am frank to say to you that that is the first time

I have ever heard of that method of determining worth or value of a ride, and I want to know whether you mean to sincerely stand by that. In other words, if I go out to buy a street car ride, it is the right of the Company to ask me what I make?

(Mr. Tingley) All that the traffic will bear.

(The Witness) No, Mr. Linwood. I never said that, and I am quite sure I didn't say what Mr. Tingley interjected. I said the value of that service to you expressed in dollars would be represented by an amount which would insure a fair return on the fair value of the property, which was the rule which prevailed in all competitive industries, that in all of your purchases, whatever you buy, if it is a really competitive commodity, you pay that which will yield the producer a fair return on the cost of production.

Q. All right. Now then, let me get you right there. Do you mean to modify your answers to Mr. Tingley to this extent; that what you determine as the method of arriving at value of the ride is the charge that will yield a fair return on value and not what the man is earning or what his salary is? A. I am not sensible that I am in any way changing what I stated to Mr. Tingley, so I do not wish by an affirmative answer to indicate that I have.

My statement was that the conception of an average rider, was a figure of speech, that there is no such thing as an average rider, when you wish to invoke such a subjective thing as the value of the service to him; that to assume that the 200,000,000 rides in a year represent a like subjective experience is fantastic.

Now, accordingly, you come to a conception of what is the value of the ride to the rider, who gets least satisfaction out of it. In other words, I will call them marginal and there must be a marginal ride. Now that marginal rides confers a satisfaction, the monetary expression of which, like the monetary expression of anything that he buys, will be fairly stated as insuring a fair return and no more on the fair value of the property.

(Mr. Tingley) Dr. Hollander, if revenue passengers

fall off after a fare increase would that indicate that you were losing marginal riders?

(The Witness) There are marginal riders in every case. If your fare were reduced, let us say to one cent, you would have more riders. If shoes could be bought for 50 cents a pair you would have more shoes bought, so just because there is that element of rise and fall some fair point has to be reached. If shoes were $50.00 a pair, fewer shoes would be bought. If shoes were 50c a pair, more shoes are bought.

Now at what point does competitive industry fix a price which it is right for shoes to be sold, and which expresses the usefulness of shoes to the purchaser? It is the fair business return, and I meant to imply that the principle to which regulated industry conformed was identical only instead of competition fixing it, regulation fixes it.

(Mr. Tingley) I think I understand your position now. Thank you, Doctor.

Q. (By Mr. Clark) Now Doctor, just show the relation of the wage and salary index to that conclusion. A. I will be glad to and I will endeavor to make my answer vivid even at the expense of seeming to be more specific as to amounts than I intended to, but here is what I have in mind.

An income recipient, I will not call him exclusively a wage earner, an income recipient in 1914 had an income which was absorbed by his cost of living with some margin. Now that cost of living has increased, but his income by every criteria that we have has increased more, and the consequent is that a large margin is available, and the deprivation of an increased expenditure is therefore less, certainly not more.

Now specifically I mean this; that the ordinary man may grumble but he realizes that he is suffering no hardship when his income has more than doubled and when he pays twice as much as he is obliged to for bread and milk and shoes.

Q. Now then aren't you coming back to what you

originally stated; that the measurement of the value of the rate is what the rider makes? A. No, I didn't say that, Mr. Linwood. The value of the ride is what the ride costs to the maker of the ride.

Q. Then if its what it cost to the maker of the ride, why do you use the salary and wage index? A. Because as evidencing the fact that the wage receiver let us say is getting much the best of the job, much the best of the bargain. If he has more money let us say, more than twice as much money as he had, and his cost of living has doubled, isn't he better off.

Q. Then you come back because he is better off—— A. No, Mr. Linwood.

Q. Mr. Clark, Linwood is my first name. A. Forgive me for my aphasia. Mr. Clark, suppose the wages have more than doubled and suppose the articles on which he expends it have, following the principle which prevailed before, doubled, isn't the expenditure of that amount less of a deprivation to him?

Q. Yes, that is an economic fact, but it just doesn't fit in this case. A. Well I am not concerned with it fitting into this case. I am concerned with the economic facts.

Q. Is the value of a car ride an economic study? A. It is to the extent of casting doubt upon determining the monetary value of a subjective thing.

Q. If I go out to buy a commodity then your conclusion is that the vender of that commodity has a right to ask me what I make for the purpose of determining what he should charge? A. He don't. That's why you get much the better of it, because what you buy means more to you than you are obliged to pay.

Q. Isn't it just as reasonable to assume that he has a right to ask me what I earn to fix the price of what he is selling me as it is for the company to ask me what I earn? A. Mr. Clark no one does that. No one gives a rap what you earn.

Q. I mean as a measure of the price which should be

charged for what I am buying? A. I haven't implied that in the remotest way.

Q. Now let's stop right there. You mean to say you have implied in the remotest sense that the price of the thing being sold shall be determined by what I earn? A. Precisely.

Q. That's all I want to ask you. I thought that was right, because I have a list of measurements of worth of service furnished by the United and I haven't in that list what a man earns and I haven't found it any where. A. Mr. Clark there are two hundred million rides, let us say a year. Would it be contended for a moment that the subjective experience of satisfaction among those two hundred millions could be converted into dollars and cents.

Q. No, certainly not. A. Well, would you say those two hundred millions are all identical persons.

Q. Certainly not. A. Then each ride means something different to each person. I exaggerate.

Q. Yes. A. Then will you confer upon the regulative body the duty of fixing, as Mr. Tingley says, the tariff according to what it will bear.

Q. That shows the absurdity of the conclusion of what I earn doesn't fix the value of what I buy? A. It has nothing to do with what you earn. That's only one of the factors. It's how much you want to ride. Two men may earn exactly the same. The one may want a ride very much and the other may not want it nearly as much. The one may need it going to work and the other may use it going to play.

Q. That's all, Doctor. But I just want to say one thing. If the value or the worth of ride is an economic fact and you are an economist, I refer you to the decision of the United States Supreme Court now by what is meant by the value of service.

(Mr. Tingley) I join in that.

(The Witness) I feel that lies beyond my province.

(Mr. Markell) But the change in earning power does

indicate, as you have just testified, the extent to which the rider is getting the better of the bargain.

(The Witness) The bulk of the purchasers of every commodity reap a subjective surplus. They get more satisfaction than they suffer deprivation. At the end of the list is the man who gets what he pays for in satisfaction. It's as much of a deprivation for him to pay as it is satisfaction for him to receive. He fixes the price, and that price must be enough to keep the producing concern a going. If he didn't it would go out of business. Now regulated industry or competitive industry are on a par.

CROSS-EXAMINATION (Continued).

By Mr. Toole:

Q. First I would like to ask this. What would six cents in 1919 be worth now? A. In general purchasing power?

Q. Yes? A. Well, 1919, suppose we say 225 at the end of 1919.

Q. I asked you about six cents. A. Can't we use a dollar just as easily?

Q. Yes. A. A dollar in general purchasing power in 1919 would have been worth say 45c.

(Mr. Tingley) How much is it worth today, Dr. Hollander?

(The Witness) Today it would be worth 66c. But remember I was talking of general purchasing power and not of specific purchasing power. The dollar in your pocket may have altered, but you don't value the dollar in your pocket, it's what you are expending it for.

(Mr. Toole) Six cents would be worth then something like seven and a half cents now? A. If it were used in buying 404 commodities.

Q. Yes, that's what I mean. A. But it isn't.

Q. How do you know? My six cents I am talking about. A. You are going to pay your fare, aren't you?

Q. I might own an automobile, I might say. A. I know if you had the 6c you would turn it over to the conductor.

Q. Now, Doctor, would you consider this question of carfare purely a matter of dollars and cents, an economic thing? A. No, and that gives me a chance for something I would like to say.

I was born in Baltimore and I have lived here all my life, and I believe that the important thing to the interest of the City of Baltimore is to have the best and finest railway service in the country, and I don't believe in paying higher fares any more than I do in paying higher prices for milk, or bread or what not, but I do believe that it's necessary to pay them which will permit the provision of absolutely tip-top service, which will permit the payment of fair wages, which will permit a reasonble return on the investment and make possible a cheaper credit, a lower credit, and I would like to look forward to the time when by a proper policy the street railways of Baltimore could be put on such a plane so that all of these things would be accomplished, and there after the citizens of Baltimore made partners in the reductions which ought to be possible and which would be possible and I believe it's more to the interest of the City of Baltimore that those things should be done than the mode of transportation upon which the bulk of its citizens depend should be starved and made mean and gradually run down. That's my belief, not as an economist, but as a citizen of Baltimore.

AFTER RECESS.

Thereupon—

JACOB H. HOLLANDER,

a witness of lawful age, produced on behalf of the applicant in rebuttal, having heretofore been duly sworn according to law and whose examination was suspended for the purpose of taking a recess, resumed the stand was examined and testified as follows:

CROSS-EXAMINATION (Continued).

By Mr. Toole:

Q. Doctor, your schedule of wages, they were based entirely on organized labor were they not, with the exception of one there where you had worked in it unorganized labor? A. The wages were corrected by the Department of Labor, rate of organized labor.

Q. Yes. A. But the wages collected by the New York Bureau of Labor Statistics and by the Federal Reserve Bank include all kinds.

Q. You don't know how the Federal Reserve Bank got their figures for unorganized labor, do you? A. I think from the pay rolls.

Q. These figures you represent, aren't they only abstractions, so to speak, rates? They don't represent actual money paid? A. That is the difference. I tried to call your attention to that. Those collected by the Bureau of Labor are union rates, so much per hour, but those collected and presented by the New York Bureau of Labor and by the Federal Reserve are of actual earnings, so much per week.

Q. It's actual money paid over? A. It's actual money paid over and would take into account part time employment or what not.

Q. Now in Baltimore you have no figures at all? A. Now I was speaking to Mr. Hill and he tells me that the figures of actual unskilled labor employed by the United have increased even beyond the percentages indicated for skilled labor and that jibes with my general intent.

Q. Did he tell you how many men in the United were working short time? He didn't tell you that? A. No.

Q. Did he give you any figures about the number of platform men that have a trip cut off a day or a couple of trips a day? A. We were speaking now of unskilled labor, men who use the pick and shovel.

Q. They have had the rates increased? A. Increased very much. I am not concerned with the United.

Q. The United is doing a little better by their employees than they used to? A. I should say unskilled labor, by the general evidence I gathered, and that's to be distinguished from this statistical data, had increased more than skilled labor, and the reason for it is obvious; that the pool out of which unskilled labor was recruited was immigration, and instead of getting from three-quarters to a million labor immigrants a year we get a net influx of perhaps less than a quarter of a million.

Q. Now one or two questions. If it don't satisfy the Commission it will satisfy my mind. Do you remember reading the address of the Secretary of Labor to the effect that we were passing through a new industrial revolution, and while it used to be that the labor displaced by machinery was taken up by the making of the machinery, now this has stopped and that men were being laid off in spite of the increased production? A. I did not see that, Mr. Toole, but it would be difficult for me to understand it provided it is as you set forth.

Q. The idea is this; that less men are producing more wealth with the aid of this new machinery. A. That jibes with what I have assumed, and that since less men are producing more wealth the share of each man is greater.

Q. That don't follow. A. But the exhibit as to wages and earnings shows it.

Q. I don't want to discuss that, but I don't think it follows, because men get laid off, and that's what's happening now. Now just a few other questions.

Granting that it is true that labor is better off today under these conditions, if everybody that had something to sell would increase the price of their product according to the ratio which labor has gone, would labor be any better off? A. If the increase in labor income were exactly and no more than the increase in the cost of living, and if all of his income were expended in the cost of living, that is, without any margin of savings, he would be exactly where he was before.

Q. Yes. A. But neither of those two assumptions are true. You don't want me to stop with a half statement.

Q. That answers what I want you to answer. What I want to ask then why do you justify then the United coming around and taking from him what he has earned? A. You see, that would have been the useful thing of allowing me to answer my whole question. I said the assumption which you made of an increase exactly corresponding to the increase in the cost of living and an income exactly absorbed is untrue.

Q. I didn't assume that. But go ahead. A. Now in the first place his wages have increased more than 100% and in the second place a larger market is available, so that whether it be railway fare or what not, 5c, 5c to the laborer, to the wage earner in 1913 as an item of expenditure meant more than 10c today.

Q. That's admitted. A. Then if that's admitted——

Q. But still might not the 10c today be harder for him to pay due to other conditions? You are only taking one social condition. Might it not be harder for the working man today to pay 10c in spite of all you say than what it was for him to pay 5c in 1913?

(Mr. Howard) You mean some individual working man or the average?

(Mr. Toole) I mean the average. We have to average, otherwise we will have to dock every working man in town and put him up there.

(Mr. Tingley) Is there an average working man?

Q. Well, we have to assume one like the economic man. It isn't true, but they assume him in political economy. A. You are not going to get me started on that. The Commission wouldn't listen to me on that.

Q. I have heard you talk on the economic man. What I mean is this. Let me give an example. A. Yes.

Q. If the Commission will pardon me, let us take the tailor. The tailors in Baltimore used to get a low wage, it was a low wage trade. In spite of the fact that their wages are falling down their wage is still much above what it was, we will say about 1910 or 1908, along there. Now, might it not be a fact that these men have a harder

time, after leaving the east side, moving up around North Avenue with better houses, better clothing, better food, better environment, may it not be harder for those men to pay 10c than what it was when they were working down town on a less wage? A. Now Mr. Toole you are getting on ground where I can speak with some confidence, because I am referee of the garment industry in Cleveland, and I have been referee in wage industrial conflicts in the garment industry in Baltimore repeatedly as you know. Now you are too well informed to entertain for a moment any doubt but that taking into account a monetary condition that the needle trade operatives are in a better condition today than they were in 1913.

Q. Their wages are higher? A. Yes. Now when you say that their use of the margin between necessary cost and actual income has gone into other things and that therefore they are naturally trying to keep these deferred expenditures down, why that may be so, that's one of the penalties which regulated industry suffers, they can't come before any tribunal and protest against the increase in articles of ordinary consumption, but here is a line of least resistance, but that any needle trade operative, to be specific, finds the 10c fare as much of a hardship as a disbursement from income as compared with a 5c fare in 1913 I deny completely.

Q. Hasn't his rent gone up? A. Yes.

Q. Don't you think the cost of living of the needle worker has increased much more than the average worker? I mean the scale of living he has taken up? In other words, he has moved into a different scale and a higher scale? A. That is the point. If he uses up, and I don't need to say how much I sympathize with his using it up, but if he uses up whatever margin he has in other expenditures and then complains that this goes up, I suppose that's human nature, but it isn't——

Q. But——

(Mr. Markell) Let him finish his answer.

(Mr. Toole) I know what he is going to say.

Q. (By Mr. Toole) Now isn't it true that under this economic system hasn't everybody gone to that man and sold him talking machines and pianos and encyclopedias and electrical apparatus around the house until he don't, even with his increased wages, have money enough to pay his expenses? Isn't that true? A. Yes.

Q. Then it really is a burden for him to pay that 10c.

Now there is something else I want to say. If you don't know, Professor, just keep quiet and I will answer it. Now you created a man. You didn't believe in the average man, but you created a man? A. Mr. Toole, you said the same thing. You couldn't bring two hundred million people on the stand here.

Q. I know that. You created a man that likes to ride like he likes to eat ice cream. A. I didn't mean to say that it was only a luxury.

Q. Are you ever on the streets between 6.00 and 8.00 o'clock in the morning and see the working men go to work and the working women? A. Yes.

Q. Can you imagine them liking to ride that way? A. I should say they like to ride rather than walk.

Q. Oh well. A. I am in earnest about that. They prefer, if the city, and this is entirely a suggestion with which you are in sympathy, if the city provided movable sidewalks and that no one had to pay anything, and as against that if they charged 1c, it would be a sacrifice. Of course anything that costs more than something else then that is a sacrifice.

Q. I suppose you don't get exactly my point, but what you say is true. I mean these people that go to work in the morning don't do it for pleasure, they do it because they have to do it. A. Right.

Q. The great bulk of the people that use the street cars have to do it. A. Right.

Q. They can't get to work any other way. A. Right.

Q. The building of the city has placed them beyond walking. If some of them walked they wouldn't have

strength enough to do the work when they got there. A. Right.

Q. Now do you know the rate of the people that work down at the American Tin Company? What they get as wages? A. No.

Q. You wrote a book not long ago, Professor, on the Abolition of Poverty, didn't you? A. Yes.

Q. A very nice book. A. The first kind word I have had.

Q. That was a very nice title? Now if this thing goes on, understand? A. Yes.

Q. This social question, you understand? A. Yes.

Q. The street cars are a social means of communication. A. Right.

Q. That the people can't do without? A. Right.

Q. Public service, public institution, the performing of public service? A. Right.

Q. Isn't there another way to look at it besides looking at it from the pure dollar and cent proposition like we are talking about it now, about the value of the service being so and so on? A. Well now, Mr. Toole, let me answer it just in as serious a strain as I can. Just because getting to his work promptly without loss of time, that is, not having to leave home in the dark and all that, is an important element in the decency of the wage earner's life. What is the policy to be pursued to insure the continuation of that? Is to give him momentarily or for a brief time a service at a cost which can not result other than in a breakdown, and insolvency, or is to give him a service at a charge which corresponds to that which he pays for everything else that he buys with the assurance, because that is one of the compensations of regulated industry, that there will be no swollen profits, but that any tendency for gains to go above a normal return will be, if necessary by compulsion, used for his advantage? I don't see that any advantage is conferred even upon the humblest worker of the city to delude him by giving him service at a cost that cannot be maintained.

Q. That's still the problem. That it can. A. That's all very well. Then it resolves itself—that was my assumption, Mr. Toole.

Q. What do you think would happen if the street car service did break down? Let's imagine all the working men went on strike tomorrow morning, don't you think within a week everybody would be able to get to work on jitneys? A. I am not willing to adopt that as an alternative. I prefer to think of the advantage of maintaining a nice service at high efficiency at a charge which does not give swollen profits.

Q. Here is what I am trying to get at, other witnesses testified that this additional fare would be a hardship taking all the conditions today as they are now, not like they were in 1913. A. Yes.

Q. Taking in the new standard of living, the new ideals of living; that the 10c car fare would be a hardship on most of the working people. Do you believe that or not? A. If a budget, a working man's budget has been warped out of shape so that these luxuries have entered and the necessaries have been crowded out as it were, and if you say that oh, he must pay these things but he oughtn't have to pay these other things, but the same would apply absolutely when the price of milk was increased, which was a hardship, but was there any possibility, was there any wisdom in trying to keep the price of milk at the old price?

Q. He could stop drinking milk but he must ride street cars. A. He couldn't if he had a baby.

Q. But all of them don't have babies. A. I don't know that many households don't have milk, and you wouldn't say that was an alternative any more than walking. You see if a man spends all of his money then if any items goes up it's easy enongh to say that's a hardship.

Q. Isn't it true now if the United takes away from the working man 50 to 75c a week more car fare and a dollar and a half a week to a family, isn't it true that it diminishes his purchasing power in other directions, and won't that have an effect upon this produc-

tion and upon employment and everything else? A. Very likely, but what is the alternative.

Q. Do you want me to tell you? A. No. This is the alternative if you will allow me to answer it. One element which is necessary to his, not merely to his comfort, but to his ability to continue as a wage earner, is assuming that immediate criterion attains, namely, that the charge is a fair return on the value of the property, he is getting that at less than he used to.

Q. Now oughtn't he get it in view of all this machinery that's gone in? Oughtn't he get it at less? Everything? A. The higher test is whether the thing functions, whether the concern can afford to provide it at that price. Is it a question as to the social advantage of fares say being 5c, or reducing fares? Of course it would be desirable.

Q. Then organization of capital then that can build up in certain ways and hide their profits from one industry to another, according to your idea, ought to be allowed to go on?

(Mr. Howard) What reference has that to the case? A. Remember I used the term constantly, a fair return on the fair value of the property, and the particular status of the United Railways isn't my concern. I submit simply in answer to the query that was put to me, what measures the usefulness of the service to the consumer, and I said the monetary expression of that would be a charge which would insure a fair return on the fair value of the property.

Q. Isn't the real value of the service for instance like this? If I organize a company and I go out here and make boomerangs, now if nobody wants a boomerang they are not worth anything, are they? A. No.

Q. After all, everything to have its change value must have use value? A. Right.

Q. That's fundamental in economics. Now if the United gives a service, following out this same line of argument, no matter what it costs to produce it, if it isn't worth it to the people, if it don't have a social val-

ue or a use value to it, why is it just then to count on the interest on the capital invested? A. May I not continue your own illustration?

Q. Yes. A. Now you have started this interesting factory of yours, and the product of it serves a use, otherwise, being a farsighted man, you wouldn't have started that factory. Now the price at which it is sold is less than keeps your plant going.

Q. Yes. A. How long do you think before not the public but you would be owning a boomerang?

Q. I wouldn't. It would go up and it ought to go up. A. Precisely. Now is it desirable that the United Railways go up?

Q. I think so. A. Then you have the advantage of a logical conclusion.

Q. I say if they can't give service at its social value it ought to go up. A. What was the social value of your boomerang factory?

Q. Why it didn't have any. A. Then it would hardly be less desirable to compare it with the United Railways.

Q. Even if the United would get 10c would that mean any more money for them necessarily in view of the fact that all the neighborhood business centers, the neighborhood movies would develop at the expense of those down town? In other words, people spend their money around their houses instead of coming down town? Isn't it true that that could happen, Doctor? A. Mr. Toole, there you are verging on a matter as to which an expression of mine would be of very much less value than those who have made a study of the experience of other cities. I can, however, refer to one economic principle which seems to me in the report I have read of the earnings has not been brought to your attention. It is the so-called elasticity of demand, and that is that commodities and services differ among themselves as between themselves, according to the degree in which an alteration in price will influence the amount demanded.

Now you can say in general that as the price of an article or service goes up less of it will be bought. As it goes down more of it, but all commodities and services are not alike in that respect. Those as to which the variation is very pronounced are said to possess a great deal of elasticity. Those to which there are little, to wit, the alteration in the price of bread would be comparatively little change in the amount demanded. An alteration in the price of cake would affect a great deal.

Now the question, therefore, is railway service marked by great or by little elasticity of demand, and the evidence presented insofar as I have seen it, which associates a shrinkage of traffic with the increase in rates and entirely neglects of almost catastraphic changes which have come over the general character of transportation by the introduction of the automobile are entirely misleading. To what extent an increase in the fare would discourage traffic depends upon the degree of the elasticity of the demand.

Now my own impression would be, and it is not anything more than an impression, that at the present juncture, when there has been elimination of what might be a considerable part of what might be called pleasure riding, cake consuming riding, when that has been eliminated, and you have gotten down as it were to something approaching the bare rock, the elasticity of the demand would be very small.

Now that's as far as you can invoke an economic principle.

Q. Unless it goes so high that it causes the buying of more automobiles? A. There again it seems to me that you ought to consider whether the buying of automobiles has been a consequent and in replacement of car use has been a deliberately calculated and intelligently calculated computation, whether people use automobiles in lieu of railroad because they have found it cheaper. Now as against that I think much is to be said; first, that it's a novelty, and second the humble users of automobiles are not accountants and haven't worked out and will not work out until the day of reckoning comes what the cost of automobile travel is as compared with street

railway travel, so that the substitution of the automobile for the street railway isn't there.

(Mr. Toole) That's all.

(Examination concluded.)

Thereupon—

C. D. EMMONS,

a witness of lawful age produced on behalf of the Applicant, having heretofore been duly sworn according to law, and whose examination was suspended for the purpose of hearing other witnesses, resumed the stand in rebuttal, was examined and testified as follows:

DIRECT EXAMINATION (Continued).

By Mr. Howard:

Q. Mr. Emmons, before we get into anything else I believe you have another one of those daily statements bringing the month of November up as near as you can to the present time, haven't you? A. Yes sir.

NOTE: Statement above referred to is here filed in evidence and marked Applicant's Exhibit No. 32 Rebuttal.

Q. Just in a word, Mr. Emmons, tell the Commission what that statement shows or indicates. A. This simply shows that we are still continuing to lose revenue passengers and passenger revenue, and that during the month of November to date, this was up to the 25th, I would like to read into the record from the 25th on, but up to the 25th we have only had two days of increase during the month. Comparing the month day by day we show a loss of $52,962 for 25 days or 4.58%. Comparing it by dates, 25 dates of the month of November in 1926 as compared with 25 dates in 1927 we show a loss of $59,726 or 5.14%.

This stopped with last Friday. Since Friday I have had at my office reports for Saturday showing a loss of $2,649, Sunday a loss of $1,944, Monday a loss of $4,971,

and yesterday a loss of $2,205. So that during the 29 days of the month we only have two increases with very serious losses.

Q. Now, Mr. Emmons, there were some exhibits filed by People's Counsel, I think they were Exhibit No. 29 that I am referring to, and No. 31 and No. 32 which undertook to estimate what your 1928 revenue would be on certain assumptions involving an additional transfer charge with a small increase. Have you anything in a general way to say about those? A. These are used in connection with a later exhibit endeavoring to show a little over 6 per cent, Exhibit No. 32.

Q. I included Exhibit No. 32 in those I am asking you about. A. Oh, I see, and it looks to me like the assumptions have been made by boosting up the passenger revenue and holding the depreciation amount down and cutting the expenses just to such an extent that the actual result shows a little over 6%.

I think there is a real fallacy in many of the figures used. In the first place, with a continuing loss of 5% at the present time, I cannot see how an increase of one per cent can be assumed for next year, especially if any additional charge is to be made and an additional one cent charge for a transfer.

Then they have assumed in that additional charge for a transfer $752,000 increased income which is entirely problematical, and also they have assumed $171,000 as charging our employees for their transportation, which is another exhibit, and which we will explain later is entirely an impossibility. If we charge the employees $171,000 it wouldn't come in the income at any rate. There are a certain amount of that would not be used and certain amount would be additional cost to use.

The question of charging a cent for a transfer has many objections to it. In the first place it shows up traffic because of the necessity to have the monetary exchange for a transfer. In the second place it charges the man who has not the convenient ride who goes from his house to his office and does not have to get off, it charges him more for his ride than the man who has a

more convenient ride, and it brings up the question all the time of rerouting so that everybody tries to get from their house to their office without this additional transfer charge.

Q. So in other words as a device to increase fares it accomplishes just as much as it may by that method and the increased fare is as much of a burden as the same increase in any other form? A. I should think so, and it's a burden to the man that's inconvenienced.

Q. How about the assumption of twenty per cent? A. that's entirely problematical. I should doubt that, especially when Mr. Wolf's exhibit No. 30 shows that nine out of twenty or nearly 50% would be short riders. If that should be so it looks to me that 20% would be very low for the deduction used.

Q. Now Passenger Exhibit No. 34 and 36 where one professes to be a correction of your own estimate for 1928, and the other professes to be a projection of your own estimate to three years into the future. How about them? A. Well in No. 34 they have boosted our rate of return which we ourselves figure at less than 7½% to 9.25 by a reduction of $1,180,000 in net depreciation account, and a deduction of about 120,000 dollars in operating expenses through a reduction of our claim for power additional cost and for additional cost of accidents, and also the elimination of $75,000 item in the taxes. By thus raising the amount available for return, and by reducing the rate base to $75,000,000 they show something over nine per cent, but I feel that that's not a correct statement.

I think this statement that Dr. Hollander showed this morning shows that the 3 per cent reduction that Mr. Wolf made because of the commodity prices is all in error, because the Doctor——

(Mr. Tingley) That three per cent reduction is not in this Exhibit, is it?

(The Witness) No, but the way Mr. Wolf said he got the $75,000,000 he made a three per cent reduction on account of commodity prices.

(Mr. Tingley) In the cost of construction.

(Mr. Howard) That is the very point. That was based on a fall of three per cent——

(Mr. Tingley) In the cost of construction.

(The Witness) It was based on the commodity price index and I hold that that's wrong.

(Mr. Markell) There wasn't anything else in the world that was meant.

(The Witness) We can introduce our cost of construction today and show that our increased expenses are more than they were before. I think that's all I have to say, Mr. Howard.

Oh, on Exhibit No. 34, that's just a question of continuing that three per cent. on into 1929 and '30 and getting the curious result which he has compelled us apparently to go to 11 cents in 1930. We made no effort to prophecy as to either 1929 or '30.

(The Chairman) You did say, however, Mr. Emmons, did you not, that if the ten cents shouldn't prove sufficient that you would then have to consider the question of zoning.

(The Witness) I did say we would probably have to try some other arrangement and get something on the distance haul.

Q. Before you went above ten cents? A. Before we went above ten cents, yes.

(The Chairman) You did have in your mind the possibility of ten cents not being sufficient at some time?

(The Witness) Some person asked that question, if ten cents were not enough what would be the next move, and my answer was that I felt the ten cent base there was possibly all that any short rider should be charged and that meant increment in some other form.

Q. These exhibits on depreciation Mr. Hill testified on that point rather than you, didn't he, Mr. Emmons? A. Yes, he did.

Q. And I don't think there is anything to add in your

testimony? A. I think your cross examination brought out the fallacy of those exhibits, Mr. Howard.

Q. People's Counsel Exhibit No. 44 was one showing the amount of your property appraisal costs and the amortization of them. Have you anything to say about the reasonableness of those? A. Only this. Mr. Nodder made the suggestion that the stockholders should take half of it and the car rider the other half and we should have the car riders taken up by the elimination of the Valuation Department. The valuation was not sought particularly by us. It was started way back in 1914 by the Commission and finally carried through, and it seems to me is a proper charge to be amortized entirely, and also I think I explained yesterday the absolute need of a continuation of a Valuation Department.

Q. Now, Mr. Emmons, People's Counsel Exhibit No. 45 is an exhibit that undertakes to show that you save $171,883 by abolishing the item of free tickets to your employees and park concessionaires. Is that true or not? A. I think that's absolutely unlikely in any way at all. There are a great many reasons why it would be unlikely. In the first place a great number of these coupons are used in Company business so that the Company would either have to still furnish the employees using the coupon books.

As far as the concessionaires are concerned it's part of our contract with them and we would likely have to pay that much more additional otherwise.

Q. Why do you put it in the contract? Because you are a good fellow? A. No, because it's usual in concessionaires' contracts to have that item taken care of.

Q. And is it usual to issue free tickets to employees in other companies? A. I know of no company that does not. I might say this; that under association coupon books there are $161,000 of them. We have about 4,000 employees using those books and it means about $40.00 per year to an employee. Of course if we charge those employees for those books it isn't at all likely that they would use them to any extent like they use the free books, but if we did charge them it is quite likely we

would be asked for a wage substitution to take care of that. One cent an hour average employee would mean just about the $40.00 a year, so I do not feel that we would save any of that. If we would attempt in any way at all to do that it would be something that other companies do not do. I think we would lose the loyal support of the employees that we have and would interfere seriously with our operation.

I might say just in passing that the Gas Company, in furnishing tickets to their employees for such as use them, and we all know they have a large number of automobiles that they use, spend with us $42,000 a year just in purchase of tickets, so you can see somewhat of an expense item that we would have to take care of did we not ourselves furnish the free transportation.

(Mr. Tingley) Those were all eliminated, Mr. Emmons.

(The Witness) No they are not eliminated. For instance coupon pass books, male, the first two items, are books that are issued almost entirely to the superintendents and instructors of whom there are 67. They are out on the street all the time, jumping on the cars. We would have to take care of that kind of transportation.

(Mr. Tingley) I thought you were speaking of the Gas Company.

(The Witness) Oh, I thought you meant our own.

Q. Now, Mr. Emmons, People's Counsel Exhibit No. 46 is in the main their method of bringing up to date your valuation as found by the Commssion? A. Yes.

Q. What are some of the items they have eliminated there? A. Two gross, to my mind, absolute errors in this exhibit. The first is the deduction of $90,259 grants made of construction. That was money donated by the Government in the cost of building the terminals at the Bethlehem Ship Building yards.

Q. Before your valuation or after? A. That was before the valuation. It was included in the valuation. The property is ours.

Q. The property was built at the time of the valuation, wasn't it? A. This was before the valuation.

Q. It was finished at the time of the valuation? A. Yes.

Q. So you know of no reason whatever why they should be excluded? A. Should not be excluded. Then Mr. Nodder has deducted 20% of labor for cost of removal of track. I think Mr. Howard on cross examination brought that out. That's just as much a cost of the new track that's in place and should be included in the valuation as of today, maybe not as labor taking out old track, but under the theoretical setup of the valuation of track being put in paved streets it would cost just as much and perhaps more to put that track in a paved street, especially a concreted street than to take up the old track, consequently we feel that this elimination of those items is absolutely incorrect.

Q. It is not a fact then that it costs more to take up old track rather than to lay a track in a street where there has been no tracks to the extent of 20% of the cost of the track? A. It does not, no.

Q. Anything like that? A. No, I think not at all.

Q. In you opinion I understand you to say it doesn't cost any more at all? A. No, it doesn't cost any more at all. In fact, Mr. Howard, there are some places that it's an advantage to have a track in the street because we put track jacks under the track and pull the whole street up with it whereas we have to dig it out if the track isn't there.

Q. Would you refer back a moment, Mr. Emmons, to People's Counsel Exhibit No. 42 on Depreciation and look at the second sheet of it and there is an item there of uncompleted work charged against the reserve $572,-792. A. Yes, sir.

Q. In other words all such work is eliminated in this calculation, isn't it? A. It is, yes.

Q. To the amount of five hundred and seventy-two and odd dollars? A. Yes.

Q. What have you to say about that? A. That is money already expended and is properly chargeable to three different accounts, first the replacement cost, under the Commission's original ruling it's chargeable to three different accounts, first is the replacement of the original cost, second is the addition of the replacement of the former type track at present day cost and the third is the added cost which is really the capital cost.

Now under the valuation we feel and I think the testimony has already shown that it is absolutely necessary to obtain the valuation that replacements now be made at valuation cost, consequently we figure that out of this $572,000 there is only some year perhaps thirty or thirty-three thousand dollars added capital, that all the rest should go to the depreciation cost, retirement cost.

Q. Have any allowances been made to you in any of the depreciation calculations for that part of that item? A. No, there have not been. They have in that same exhibit a deduction of the depreciation account paid to the Gas Company, Mr. Howard, which Mr. Nodder himself testified had been agreed to by the Auditor of the Commission at the time when consented to by the Commission, or rather, as he put it, been advised by the Auditor of the Commisson, the then Auditor of the Commission was Mr. Dunn, and consented to by the Commission.

Q. Now Mr. Emmons passing over these statements that are tables made from the books I think the next I come to is People's Counsel Exhibit No. 49 which is a statement giving what it calls your average rate of interest on indebtedness as of September 30th, 1927, and I believe it has already been brought out that that is the nominal rate of interest and not the real rate to the Company taking into consideration the price of securities sold.

(Mr. Tingley) You mean the price at which securities are sold by the Company to the bankers?

(Mr. Howard) The price the Company realzies on the securities.

Q. (By Mr. Howard) What have you to say about this exhibit? A. Well we have had figured up to see what the present yield is on our various classes of securities on the present market value.

(Mr. Tingley) Yield to the investor, Mr. Emmons.

(The Witness) Yield to the present investor on the present market value.

The underlying bonds, present market price averaging around par, the yield is almost five per cent, 4.98. United Railways securities in themselves, the first 4s, first 6s, refunding 5s, 6% notes, and income 4s, average 6.13.

Q. Is this information on the table that was provisionally filed when Mr. Fenhagan was on the stand? A. No, this is just a memorandum. The Maryland Electric shows an average of about 5.71 on market yield.

But the securities we have issued since 1920, and which Mr. Fenhagan testified about on Exhibit No. 31, shows that the securities issued July 1, 1920, which have since been retired, cost the Company 9.38 per cent. The ones issued January 15th, 1921, also been retired, cost the Company 8.70 per cent. The ones issued March 1, 1922, cost the Company 6.75 per cent. The ones issued March 1, 1922, coincident with the one I just referred to cost 6.60 per cent, the first being the $6,000,000 consolidated 6s, 4s converted into 6s, that was a distinct sale of the 6,000,000, the second being a substitution of December 1st 4s for 6s by the payment of $250.00 per bond, which I believe you will remember, and August 1, 1922, an issue of 5 Year 6% notes which have since been retired cost 7.27%. January 1, 1924, an issue of Series A 6½% Maryland Electric Railways First and Refunding Mortgage Bonds cost 6.93%, and the last issue of 6% notes, three year notes, cost 7.32%.

(Mr. Tingley) What's you dividend rate on your stock?

(The Witness) You mean on the par?

(Mr. Tingley) Yes.

(The Witness) 4 per cent.

Q. Mr. Emmons, the Exhibit filed this morning as Exhibt No. 31 is a tabluation of some of those figures? A. Yes, I was reading from that.

Q. The one filed this morning is correct, isn't it? A. Yes, it is.

Q. Have you any comments to make on the general situation shown by that? A. With the exception of this: that money is costing us around 7% or over, and I have this comment to make, that I think the Commission have been advised in the other case that our need of credit is extremely great. We have before us in the next five years refunding to the amount of about $5,000,000. We have before us a desired construction program of about $8,000,000, which includes new cars, includes automatic substations and a good many things of that type which we would like to do, but we have at least the absolute necessity of $9,000,000 on refunding.

The Commission can very readily see there is quite a difference in the ability to obtain that money if we have credit or if we haven't, and quite a difference in the ultimate cost if without credit we have to pay seven per cent or if with credit we could get it for six.

Q. Now, Mr. Emmons, People's Counsel Exhibit No. 50 was a statement of your notes outstanding on September 30 and showed a rate of interest of from 4½ and 4¾ to 5%. Have you continued paying these same rates since? A. No, the first listed, the once due October 27th, have been renewed.

Q. At what rate? A. And it was necessary to increase the rate to 5%. The ones due in November, 1928, we were able to in New York renew on the same basis, 4½%, but all of these are under a requirement that the banks have of maintaining a twenty per cent deposit.

Q. In other words, when they lend you $100,000 you have got to agree to let $20,000 of that stay with them through the loan, is that right? A. That's right.

Q. So you really only get a net loan of $80,000 in that case? A. Yes.

Q. And therefore your real or vital rate of interest is higher than indicated? A. It's more than 6 per cent., yes.

(Mr. Tingley) Do you get interest on the deposit, Mr. Emmons?

(The Witness) Yes, but even figuring the interest on the deposit it's even more than 6 per cent., 6.05 we figure.

Q. And they are three months loans, aren't they? A. Those are three and four months loans.

Q. Look at People's Counsel Exhibit No. 47. A. Yes.

Q. There are two items there that they profess to eliminate, one interest on Bethlehem Steel Company construction. Did you pay that or not? What is that? A. That certainly should not be eliminated because it's in the nature of a rental to the Steel Company for construction work. It's been explained that the Steel Company did not wish to give up any of their property so they arranged to construct the tracks through the property, own the tracks on which we pay a rental basis.

(Mr. Tingley) Do you know that that's eliminated on your Exhibit No. 24, Mr. Emmons?

(The Witness) I don't know that it is.

(Mr. Tingley) It is.

Q. That property that you are paying rental on therefore wasn't included in your valuation, was it? A. We do not own it, no sir.

Q. Now commissions for paying coupon interest, is that an ordinary expenditure or not? A. I must confess I am not sure about that, Mr. Howard.

(Mr. Tingley) On that other item, Mr. Emmons, we just followed your Exhibit No. 24.

(The Witness) The fact is we do not own the property. It was included in the valuation and we have to pay for it in the form of rental and we have made an error if it's not included. This cost of paying coupon interest is an item of expense. It's a necessary expense.

(Commissioner Harper) Is that paid to the banks?

(The Witness) That's paid to the banks, yes. I would like to say further about this Exhibit No. 47, Mr. Howard, the rate bases I think are taken too low, by which in taking the rate bases low they have shown a return of a little over six per cent in two of the six items.

(Mr. Tingley) That other item was taken off of your Exhibit No. 24, too, Mr. Emmons.

(The Witness) That may be true. I am not sure.

Q. Will you refer to the exhibits that were filed by Senator Benson in connection with the Halethorpe end of this case? Now I think instead of going over those exhibits one at a time, which would take longer, if I asked you one or two general questions on the subject we will get over it quickly.

First of all, Mr. Emmons, does the Halethorpe line pay expenses or not? A. It never has.

Q. It never has paid expenses, you say? A. No.

Q. How about the Dundalk line that has been so much contrasted with it? A. Always has been one of our best paying lines.

Q. Now, without my asking you particular questions, you have seen these exhibits that were produced, and you have heard what the witnesses have said about Halethorpe, what have you to say to the Commission in reply to the charge that you are making an unjust discrimination against that community or against the builders or operators who are trying to develop it? A. We are of course carrying out the orders of the Commission, and we feel, as I have said before, that the City limits are the natural limits of the first initial fare. I think every place that it is not the limit of the fare there is some definite reason in the Commission's mind rather apparent, either the line is a very slight distance over the City limits, or in the case of Dundalk, the Dundalk Junction forced a rather overly long distance outsde of the City on a sloping line down through Dundalk.

I went out Sunday to Halethorpe to see the situation,

and I was quite amazed at the development the Senator had out there, and felt they had been pretty good real estate developers.

Then I swung around to Frederick Road and Edmondson Avenue and I noticed over there beyond the first fare there was quite a large development.

I swung then over to York Road and found Anneslie and Stoneleigh very fine developments.

I went on over to Hamilton out to the Carney Road and found beyond Taylor Avenue quite large developments.

At the same time I see within the City limits a great deal of still undeveloped property, so it would look to me like the developers of Halethorpe have been very successful, but it looks to me also there are other people who have the same difficulties of a second fare and seem to be getting along with them as the Senator has.

Undoubtedly there must be some limit to the first fare. Now, if it can't be definitely the City line, and there is some excuse for extending it over it and not go indefinitely beyond the City line, because if the City line is a reason for a limit of fare, then the distance beyond the City line should be measured by other localties, and as I brought out before Towson is just as far over the City line as Halethorpe, admitting it is a longer haul all the way out there, but I am quite sure we would have the same contention.

I heard this mornng of a contention that they want a single fare to Ellicott City instead of two fares. Carney is just the same distance out from the City line as Halethorpe. So that there is some place that the limit has to be drawn, and as we remarked before, that if because some of these other lines are extended beyond the City limits, and it looks like that is a reason why the Senator feels that is a discrimination, there are two ways to stop the discrimination, one is to lower his rate to the City or the other is to raise the rate outside the City.

Q. Where ever a far zone stops you inevidently have the apparent discrimination of somebody who says he

only rides 200 yards further and he pays the whole extra fare? A. We generally have that.

Q. That's inherent in a fair zone system? A. Yes.

Q. I believe you have had prepared a graph or plat showing insofar as dwelling permits are affected, showing what the course in building generally has been?

(Mr. Tingley) Is this regarding Halethorpe?

(Mr. Howard) This is in reference to Halethorpe.

NOTE: Plat above referred to is here filed in evidence and marked Applicant's Exhibit No. 33 Rebuttal.

(The Witness) If the Halethorpe people feel that a failure of building activities out there today is due to their conditon, that there is a general slumping of building activities, this shows the years 1925, '26 and '27, showing that 1926 fell materially below 1925 and 1927 is materially below 1926.

Q. There is nothing further you want to say is it Mr. Emmons? A. I was questioning Mr. Howard whether we should even submit the fact that this Halethorpe Exhibit F, showing list of manufacturers employing more than 100 people served conveniently by the No. 3 carline enroute from Halethorpe before reaching Baltimore and Howard Streets, we have had an analysis made of that list with this result; that on the list of 53 factories there are only four of them that are directly served by the No. 3 carline, and by none other. There are two served by the No. 3 carline and by the Monroe Street bus line; there are three served by the Halethorpe carline and one other line; there are three served by the Halethorpe line and two other lines; there are eight served by the Halethorpe carline but by four other lines; there is one served by the Halethorpe carline but by five other lines; there are four that are served by six other lines; three served by seven other lines; there are eight served by eight other lines; there are six served by nine other lines; there are three served by ten other lines; there are two served by eleven other lines; there is one served by twelve other lines; there are three served by thirteen other lines; there is one served by six-

teen other lines; there is one served by twenty-six other lines. So I just give that so that the Commission will not have the impression that this list of 53 factories, all of them, would have any tendency whatever to use the Halethorpe line entirely if there was a change in fare.

Q. There are not fifty-three factories then there dependent only on this line? A. I would say there are only four.

(Commissioner Harper) Did I understand you to say that Halethorpe has never been a profitable line?

(The Witness) No, it never has.

(Commissioner Harper) Has there been an improvement since the extension of the No. 3 car line.

(The Witness) Yes, a decided improvement, and apparently it has had a marked effect on having the double truck car out there and having two men on the car, and also running down in the center of the city. Those three items I think have made quite a change on the income on that line.

Q. And when did that change take place? A. It took place December 1, 1926, as a part of the re-routing program.

CROSS EXAMINATION.

By Mr. Benson:

Q. Mr. Emmons, of course your suggestion that the Halethorpe line has never paid as compared with the Dundalk line, you can't make any comparisons between the Halethorpe line, for instance, and the Overlea line, because you can't separate that end that's been having the preference all these years, can you?

(Mr. Howard) I think his statement was an absolute fact; that it never did pay the expenses; not likely to compare them.

(The Witness) You bring in the Overlea line now, Senator, in what way.

Q. I bring in that you can't tell whether the Overlea

line, if it had an extra fare on the other end of the line would have paid or not? A. No, I couldn't tell that.

Q. Overlea is also in the county, isn't it? A. I think it's shown to be three hundred feet in the county.

Q. Now those people that live 300 feet in the county and those people who walk to the end of that line all enjoy the same county taxes that Halethorpe enjoys, don't they? A. Undoubtedly, yes.

Q. It doesn't make any difference, as far as the taxes you pay whether you live three hundred feet in the county or three miles, you pay county taxes, don't you? A. Or three feet, I guess, yes.

Q. And even those people where you run exactly to the county line, you can't differentiate from the people who live over in Baltimore County and ride on your railroad and those in Baltimore City and collect any greater carfare, can you? A. No, if they walk to the city limits.

Q. If they walk to the city limits they have the same privilege and the same fare as those people that live in the city haven't they? A. That's right.

Q. And I take it that if the Halethorpe line were paying $250,000.00 a year gross, and much of it were profits, you would be more willing to give us one fare out there than you would because it's been a loss out there? A. It would make a little different situation, of course. Q. You would be more willing to get it up? A. That would make a little different situaton.

Q. You would be more willing to give it up? A. No, I don't think I would be willing to give up my idea that the city limit is the limit of the city fare.

Q. But you did give it in Dundalk Junction and went a mile and six-tenths to the county? A. We were compelled to give it up.

Q. I see. You were compelled to give it up? A. Right.

Q. And you went a mile and six tenths into the county? A. We were compelled to do that.

Q. You went out to Taylor Avenue a mile beyond the city, on the Harford Ave. line? A. We were compelled to do that.

Q. You went out to Woodlawn a mile beyond the city line? A. We were compelled to do that.

Q. You went to Lorriane Cemetery, took over a railroad that wasn't paying, and I am going to make a guess is not paying as well now as the Halethorpe line is? A. Well, it's now a part of the system, I couldn't tell whether it's paying or not.

Q. Well, it wasn't paying when you took it over? A. It was looked upon as a liability and not as an asset.

Q. It was not paying as well as the Halethorpe line? A. No, it was not.

Q. And you took that over, didn't you? Now you made a statement here a little while ago, that you thought that if you got beyond ten cents for a short haul that you thought you might have to zone. Now does it make any economic difference to you in a case when the Commission has established in several other cases, particularly in the 1924 case at Dundalk that five and three quarters miles approximately from Charles and Baltimore Street by air line, even though that air line carries you across the river and there is no way of getting there by air line, was a fair haul for one fare as compared with these other sections, even though it's a mile and six tenths in the county, you think that it is still unfair to you to put Halethorpe on this same measure as you put Dundalk? A. I can't do anything more than reiterate the thing that I feel that the city fare——

Q. Why reiterate? A. That's all I can do is to reiterate.

Q. What you feel is everything in the city should have one fare? Q. That's right.

Q. I agree with you that far.

(Mr. Markell) The Commisson has said it should.

Q. Yes, I understand that. Now if that is true, but

you have extended out into the county different distances and in those extensions you have not made the city boundary the measure in any case, have you? A. The extensions have not been willing extensions on our part, and this case is up to the Commission to decide it.

Q. I understand that, Mr. Emmons. I am just trying to get at the facts, but there have been no extensions made from the city boundry as compared with other extensions from the city boundry, have they? A. I didn't quite get that.

Q. I mean the extensions that have been made out into the county, have been made counting from the center of the city, and not from the boundary? A. I think all the extensions have been made in connection with the amount of the track beyond the city limits. I don't think any of them have been made with the idea of a measure from the center of the city.

Q. Didn't you read the decision in 1924? Didn't you hear us read it into the record, where it said that the distance from Charles and Baltimore Streets gave the zones in the Commission's opinion.

(Mr. Markell) They were speaking of zones that were limited in the city limits.

(Mr. Benson) They were not, because they went to Dundalk which was beyond the city limits.

(Mr. Markell) That was merely incidental to the city limits.

Q. Now I ask you, if you didn't read that opinion? A. I read it, yes.

Q. Don't you remember it? A. I remember it, yes, but the question wasn't a question of distance out there when it came to Dundalk, it was a question of getting those two lines together, so that——

Q. The Commission didn't say that in their opinion. A. But I know the reasoning that they had.

Q. But they didn't give that in their opinion? A. No.

Q. They gave their reason that it was an unjust dis-

crimination against that section to require them to pay two fares to Dundalk Junction, didn't they? A. I didn't write it. I think they said something like it.

(Mr. Markell) They didn't say that.

(The Chairman) I don't think so, Senator.

(Mr. Markell) They said it was unfair to make them pay two fares to the city limits, and as Mr. Emmons said they simply said Dundalk Junction for reasons that they didn't express, but which were eminently those which Mr. Emmons just gave.

(The Chairman) The purpose of the Commission was to enable the people living in the neighborhood of Patterson Park and Central Avenue and Broadway to get down to their work in the extreme eastern end of the city and perhaps a little over it for one fare instead of paying two fares as was the case at that time. Now if the opinion of the Commission reads any differently from that I will be very much surprised.

(Mr. Markell) It doesn't read any different.

(Mr. Benson) Now if the Chairman please, I hope that I am duly respectful to the Chairman of the Commission, but the Commission on page No. 13 of their opinion says:

"The length of the ride from the center of the City to the end of the first zone on these three lines is three miles. The length of the ride on the Belair Road, Harford Road, York Road, Roland Park, Mount Washington, Pikesville, Gwynn Oak, Hillsdale, Edmondson Avenue and the Frederick Road or Catonsville lines, is in each case over five miles * * *"

Now I call the Commission's attention to the fact that a number of those lines extended into the county at that time.

(The Chairman) That's true.

(Mr. Benson) Now then——

(Mr. Markell) Read the Commission's conclusion.

(Mr. Benson) (Reading):

"* * * from the center of the city and on some of them it is possible to ride over eight miles for one fare. If the 3 cent transfer charge on the Curtis Bay line—South Baltimore—were to be eliminated the length of the ride from the center of the City will be only five miles. It will thus be seen that the eastern and southeastern sections of Baltimore City, as compared with the northeastern, northern, northwestern and western parts of the City are discriminated against."

(Mr. Markell) But it didn't say Baltimore County.

(Mr. Benson) I understand, but incidentally at the same time they ignored entirely the southwestern section of Baltimore City in that opinion. It wasn't called to the Commission's attention, and when you did get ready to remedy that inequity that existed in the southeastern section, you went out into Baltimore County and did it.

(Mr. Markell) On the very preceding page the Commission commented on the fact that last year the extensions included extensions to the city limits on the Halethorpe line.

(Mr. Benson) Yes, I know, but it don't make any difference when the Commission commented on in a preceding case, in this case they extended into Baltimore County.

(The Chairman) They did.

Q. Now Mr. Emmons this exhibit we filed with reference to these factories along the No. 3 line, there isn't any on there that aren't served by the No. 3 line, are they? A. No, they are all possible, but some are three blocks away.

Q. Now you don't mean to say that the Dundalk line serves all the factories down in that section of southeast Baltimore we compared with, do you? A. There has been no claim of that.

Q. I mean but neither have you made any claim that this is the only one. In addition to that when we took in our other exhibits the southeast Baltimore Section that included in our natural territory not only Highlandtown

and Canton, but on down to Federal Hill and down Locust Point? A. Which other exhibit do you mean? The one about buildings?

Q. No, the exhibit about the factories.

(Mr. Howard) The four quadrants with the density of factories.

(Mr. Benson) Yes.

(The Witness) I didn't analyze that.

Q. Well, it's just as true of the Highlandtown and Locust Point section that there are different car lines and different ways of getting there, and that no one section of these factories is served entirely by any one line? A. That would be true.

Q. For the purpose then that we introduced our exhibit to show that people could live on our carlines for one carfare it would serve the purpose, wouldn't it? A. Yes.

Q. Now on these other lines that serve that section they can do it and live greater distances, these other lines that serve these fifty odd factories, they can go greater distances from their places of business for one fare than they can go on the Halethorpe line for two, can't they? A. It's a question of where these factories may be. If they are quite at the end of No. 3 line it might not be so.

Q. Well, if they are anywhere within the city limits? A. That's possible by using a transfer going from one line to the other, sure.

Q. Then the fact is any one working at any of these factories could live at greater distance in the city and great distances in the counties, by using one of these other lines that serve them than they could by using the No. 3 line, couldn't they? A. That's possible.

Q. What advantage is that to you to have people use those other lines to ride greater distances when they could ride shorter distances? A. No particular advantage.

(Mr. Benson) That's all.

CROSS EXAMINATION

(Continued).

By Mr. Tingley:

Q. Mr. Emmons, have you before you Exhibit No. 26 rebuttal? A. Yes.

Q. Now taking your exhibit No. 26 I don't want to misquote you, but my recollection is that you said the exhibit indicated a comparable trend in Cleveland, St. Louis and Baltimore for the period covered by the Exhibit in revenue passengers. A. No, the ups and downs. Where one city goes up the other goes up and when one goes down the other goes down. That's what I meant. They rather superimpose on each other.

Q. The exhibit also shows doesn't it that the fare in Cleveland is six cents and the fare in St. Louis eight cents at the present time? A. Yes, but I gave you the facts that the Cleveland fare was now seven cents. This is only up to 1926, and the Cleveland fare is about to be changed to eight cents, according to my advice.

Q. The St. Louis fare was changed to eight cents in July this year? A. Eight—seven and a half, yes.

Q. Why do you think that Baltimore ought to be taken out of the fare class of Cleveland and St. Louis and put in the class Cicero, Ill? A. The Park Tax and other operating conditions we have makes us a different situation from these cities. Cicero, Ill., is part of another system.

Q. Do you think that Baltimore fits in with the group of cities having a straight ten-cent fare that you read yesterday? A. Certainly, with Boston.

Q. You think it fits in with the others? A. Well some of the others are smaller. I think it fits with Holyoke and Worcester. It's larger than those.

Q. It's larger than any of those except Boston? A. That's right.

Q. Most of these are cities of less than fifty thousand inhabitants? A. Excepting Worcester and Holyoke.

Q. I think you stated that increased fares are usually

put in when passengers are falling off? A. I did say that was the general reason for an increased fare.

Q. Weren't those periods usually characterized by industrial depression and unemployment? A. I do not think so. I think at the present time the depressions in business are due entirely to automobile rather than to unemployment.

Q. Then how would you account for the fact that they fluctuate up and down? A. These fluctuations up and down are seasonal fluctuations.

Q. If the automobile is responsible for the decline in revenue passengers, do you think that increase in fare that bring the street railway fare constantly closer to the cost of operating an automobile will remedy the situation or result in further loss? A. I have said many times I don't think it makes any material effect one way or the other.

Q. You think a one-cent transfer charge will have the result of some fall-off in passengers? A. I think we will have a decrease next year.

Q. Do you think there will be a decrease? A. Possibly, slight.

Q. How much more would there be on a 2½-cent increase in rates? A. I have assumed a total 5% decrease.

Q. Mr. Emmons, if the exhibits offered by People's Counsel based on data prepared by the American Electric Railway Association don't show the effect of fare changes on revenue passengers, what were they prepared to show? A. It doesn't show the effect as the People's Counsel submitted them. It shows the data given in bulletin No. 116, but it doesn't show the context of it.

Q. As a matter of fact, Mr. Emmons, wouldn't Bulletin No. 116 show very much more drastic results than are shown by that exhibit? A. No. It only shows one side of it. It doesn't show when they had a decrease in passengers they had an actual increase in reverse, which the companies must have in order to exist.

Q. Wasn't the title of that bulletin "Effect of Fare

Changes on Revenues and Riding Habit?" A. That may be. I have a later bulletin and I think that same title is carried over.

Q. If that were true would you think the American Electric Railway Association thought there was some relation between fare increases and riding? A. No, I don't think so.

Q. Do you think the title would be misleading? A. I think so, yes.

(The Chairman) You spoke a moment ago, Mr. Emmons, about your estimate of 5% increase in riding in case of an increase in fare?

(The Witness) Yes.

(The Chairman) You mean that 5% additional.

(The Witness) No. I said a 3% decrease normally, which I expect next year.

(The Chairman) As I understand it you have had a decrease in fares, we will say of 4% or 5%. I think you have said 5%, did you not?

(The Witness) In November the decrease in revenue is 5%.

(The Chairman) Then do you mean if you had an increase in fare that you would have a further decrease of 5%?

(The Witness) No. Oh, taking the year all the way through, I think the condition at the present time, Mr. Chairman, is that we are on quite a decline, and I am figuring that with our having a 5% loss now, under the same rate of fare, that any return condition will certainly not make us any better than 3% less next year, without any change of fare at all, because I think we are on the down grade. I am not attempting to project for 1929 and 1930. I do feel, however, that with no change at all we will probably have a further 3% loss next year. I am adding to that 3% loss next year and an addition 2% because of the change in fare.

Q. That's below 1927? A. Yes. It's about 3% total for the year, but we are running 5% now.

May I say this, Mr. Tingley? I do not know whether the association felt that they made a misleading heading to their bulletin No. 116, but this bulletin No. 163 has evidently changed that heading. It reads now: "Street Railway Fares in American Cities," shows cash rate, ticket rate, they supply reduced rates and transfer privileges, effective date and previous rate.

Q. That's a different bulletin? A. Yes.

Q. And it was gotten out for different purposes, wasn't it? A. No, it's the street railway fares of other cities. It gives the whole history of fares.

Q. Mr. Emmons, don't you know that Commissions have been taken judicial notice of the fact that increased fares above the limit of this company's present fares result in loss of passengers? A. That who have? I know New York and the small city of Syracuse rather intimated that there was a limit there, but that was different than in Baltimore.

Q. No, haven't they taken judicial notice of the fact that increased fare above the limit of this company's present fares result in loss of passengers? A. Revenue passengers?

Q. Yes, sir. I mean isn't that now a well recognized fact? A. No, I am not sure, but I think it's possible that you are right, that on a minimum carfare that you are carrying the same number of passengers every day, and you had an increase of fare tomorrow, the day after tomorrow you might have a slight decrease in passengers, but not enough in any way to offset your increase in revenue, and according to the Boston situation, even from an increase to the Boston situation, even from an increase from eight cents to ten cents, when they had a decrease of 6%, not all due to the increased rate of fare, the following year it came back, 6.3% back.

Q. When a downward trend has already set in and the fare is then increased, how can you tell how much of the subsequent decline in the trend is due to the fare and

how much would have occurred anyway? A. Just now I would say this. If we are going on a downward trend of 5%, and the fare increase were put in, and we would reach 6 or 7% we would all guess that the 1½ or 2% was due to the fare, but I know of no way of proving it.

Q. Would you apply that to a case where the downward trend has already started and an increased fare is put into effect and there is a further decline? A. I think you would have to deduct from that further decline the original decline before the fare was put into get some idea of what the fare itself did.

Q. Taking your exhibit No. 26A.

(Mr. Howard) Which town is that?

(Mr. Tingley) This is Twin City.

Q. (By Mr. Tingley) Will you project the high points at the end of 1923 and 1924 into 1926, Mr. Emmons? A. Yes.

Q. Doesn't that show a peak in December, 1925, under an increased fare considerably below the trend shown by that line? A. Yes, but it also shows a very marked downward trend for the years 1923 and 1924 and 1925 before the increased fare was put in.

Q. That's right. But following out your last thought. You would place the responsibility for the decrease in passengers after the fare increase upon the fare, wouldn't you? A. No, I would say that was put in on a downward trend; that even if you had no change of fare, you would still have a downward trend. I would say there might be some addition due to the increased fare, but that was all.

Q. It would accelerate it, wouldn't it? A. Not seriously. It might to some extent.

Q. Why do you think it wouldn't seriously accelerate it? A. I don't think this shows it seriously accelerated it.

Q. It's simply a guess one way or the other, isn't it? A. If you take the low parts of 1923, '24 and '25 and '26, you will notice almost a continuous drop.

Q. I was just going to ask you to do that. Will you also project the line from the low position for 1924 and '25 into 1926? A. If you draw a line connecting those you will find pretty near a regular trend drop.

Q. Doesn't that show the low point in 1926 was below the trend? A. No, I don't think so.

(Mr. Howard) The low point in 1925 was under too.

(The Witness) I think it shows simply a gradual decrease in passenger riders to my mind due to the use of some other vehicle which is the automobile.

Q. How can you arrive at any basis of apportionment between the amount of decline that would have occurred any way and the amount that would occur because of the increase in fare? It's a guess, isn't it? A. No, if you draw a line from the bottom of the valley in 1923 to bottom of the valley in 1926, it's pretty close to a general decline, if you will do that, and it looks to me like the fare had not much effect on it.

Q. Mr. Emmons, take your exhibit No. 26B. Doesn't that show a sharp upward trend in revenue passengers before the injunction against the jitneys was obtained? A. It shows an upward trend, just slightly, so it is the seasonal trend of the school months, September.

Q. Isn't it higher than any September had been prior to that under the jitney competition? A. That is so, yes.

Q. Mr. Emmons, doesn't this exhibit show that under a seven-cent fare there was an increase in revenue passengers, despite the imposition of a two-cent transfer charge? A. There is an increase in revenue passengers, but I think that's due entirely to the people coming back from the jitneys.

Q. Apparently the two-cent transfer charge didn't act as any deterent though, did it? A. It doesn't look like it here.

Q. Taking your exhibit No. 27, was the placing of the improved buses and improved equipment on the Charles Street line coincident with the establishment of the ten-

cent fare? A. I think we did put new buses on about that time. Double-deck buses.

Q. Put in at the same time, weren't they? A. I think we did, yes.

Q. For what purpose were they put on? A. We wanted to give a better service.

Q. You also wanted to induce increased riding, didn't you? A. We endeavored at that time with an increase to ten cents to give a seat to every rider on the bus.

Q. You also wanted to induce increased riding, didn't you? A. Yes.

Q. Do you think that would account for any increase in revenue passengers that occurred? A. That would account for some, but apparently the ten-cent fare didn't keep them off.

Q. Doesn't the Charles Street bus serve a class of people better able to pay the ten-cent fare than the average rider? A. I don't think so.

Q. You do not? A. They are a different class of people, but there are the same type of people in all sections of the city. Some sections may not be so well able to pay ten cents.

Q. The people on the Charles Street line, you think, would be typical of those you would find on the average car line in the city? A. I don't think there is any material difference, if you take any north, northeast or northwest section of the city. It might be so, when you get down east or south.

Q. Mr. Emmons, is a bus ride generaly considered by the public as worth more than a car ride? A. There seems to be an urge to ride on rubber. I don't know why.

Q. People are willing to pay more for it, aren't they? A. They seem to be.

Q. Don't you think that the furnishing of a seat has something to do with that? A. We are not doing that, unfortunately.

Q. You are in a great many more cases, aren't you? A. No, I think now in the rush hours we are about as crowded on the buses as we are on the street cars.

Q. Are you serious in that, Mr. Emmons? A. I am, unfortunately. I get as many complaints about people standing up in buses.

Q. Well the Commission doesn't. Take you exhibit No. 28, Mr. Emmons, now the car lines as shown on the exhibit show a drop in December, 1926, don't they? A. Yes.

Q. That was at the time when the rerouting was put into effect. A. That's right.

Q. Then in February of 1927 the line drops back to normal, doesn't it? A. It drops back considerably. February, of course, is a very short month, that's one reason why there is this drop in February, Mr. Tingley.

Q. Doesn't it look like the effect of the rerouting had disappeared in about a month? A. No, if you continue to March, it goes quite up again.

Q. Isn't that a seasonal change too? A. No, that is the effect of the 28 and 31 day month in there.

Q. How do you account for the fact that the apparent effect of the rerouting was of such short duration? A. It isn't if you will compare those months with the months of last year.

Q. The entire trend is upward, isn't it? A. The entire trend of 1926 was upward. The entire trend of 1927 is more or less level.

Q. The trend was upward before the rerouting was put into effect, wasn't it? A. Yes, slightly, but no jump like shown in December, 1926.

Q. And if that jump shown in December, 1926, were taken out and the line carried ahead, you would have a perfectly normal successive trend going upward, wouldn't you? A. No, because its a jump from 800,000 people, which is pretty nearly the maximum, up to December 1, 1926, up to pretty close to 900,000 people for every month, but February and March in 1927.

Q. Well in 1925 there had been a jump from 700,000 to more than 800,000? A. There is a slight increase there, yes.

Q. And in 1926 there was a jump from a little over 700,000 to 800,000?

(Mr. Howard) You are not comparing corresponding months.

(The Witness) Well, if you take the different months you wouldn't find any jump of 100,000 people from 1925 to 1926.

Q. I am taking the low point and the high point, Mr. Emmons. A. If you take the low point of 1925 its a little less than 700,000, and the low point of 1926 is but a little more than 700,000, so there is not much change, but if you take the low point of 1927 you will see almost 100,000 change in it.

Q. Isn't the inference to be drawn from that exhibit that's the break in adjustment that was caused by the rerouting in December was entirely readjusted in February or March of the following year? A. No, I woudn't draw that from that at all, because the very last month shown there, if you take the month of September, October is the last month shown, it shows about 890,000.

Q. But the line was going up just that way before the rerouting? A. No, if you take September of last year you will see 800,000.

Q. It was a steady upward trend, wasn't it? A. It was a steady upward trend, but nothing like a jump of 90,000.

Q. Don't you think that some other cause than rerouting must be found for the increase in revenue passengers in 1927? A. On the car line or the bus line?

Q. On the car line. A. No, I think entirely the rerouting did that.

Q. How about the bus line? A. On the bus line I think the rerouting did that.

Q. You think it was responsible for that in its entirety? A. Yes.

Q. Take Exhibit No. 29, Mr. Emmons. Isn't the principal significance of this exhibit that it shows that on the basis of cost of living in Baltimore as estimated by the company a ten-cent fare is not warranted? A. No, I woudn't say that.

Q. It does show that, doesn't it? A. No, I think it shows to the contrary; that the people generally are more able to pay a ten-cent fare today than they were before.

Q. Is that on the basis of the cost of living curve, Mr. Emmons? A. No, cost of wage curve.

Q. I only ask you about the cost of living curve. A. That's only a part of the story.

Q. Its that part of the story I asked you about?

(Mr. Howard) And what is the question?

(Mr. Tingley) Whether the exhibit didn't show, on the United States Bureau of Labor cost of living curve in Baltimore, that a ten-cent fare was not the value of the service in Baltimore today.

(Mr. Howard) Don't you think that's a question that is making the other party assume your side of the case?

(Mr. Tingley) That's what I want him to do, and I don't think there is anything unfair about it.

(Mr. Howard) I don't think you have a right to ask him to assume that you are right.

(Mr. Tingley) I have a perfect right to ask him hypothetical question.

(The Witness) It certainly shows the 7½-cent fare wasn't right.

Q. On the basis of the estimate chosen by you? A. On the basis of the valuation, but as I say the cost of living curve isn't the story by any means. On the cost of wage curve it certainly justifies a ten-cent fare and on the union labor curve it justifies it.

Q. Suppose you took it on the basis of 1919, on a six-cent fare, how would that effect the result? A. It would effect it considerably, but the fact that a six-cent fare was given in 1919 isn't proof to my mind at all that it was a proper fare.

Q. The Commission stated at that time that it would not bolster up credit at rates that were unfair to the public, didn't they? A. They may have made such a statement as that.

Q. And they stated that the value of the service at that time, in their opinion was six cents? A. You have read something like that, but Dr. Hollander said this morning the Commission may have been wrong.

Q. I say this will all respect, I don't think Dr. Hollander understood the legal principle involved. I think he thought that what value of service meant was that that was not the maximum limit of service value which which is the sense in which it is used in the Law, but would be the value of the car ride if there were no such legal principle to operate, which might or might not be a totally different thing. A. I certainly disagree with any idea that six cents in 1919, with the costs that were then existent and the wages received by people, was the value of the service.

Q. Why was it that the Company only asked for a part of their increased cost of operation at that time? A. They hoped they would get thru, but in Mr. Zimmerman's testimony he really asked for a ten-cent fare.

Q. I know he did, but he didn't get it. A. He should have had it.

Q. Regardless of that the value of the service was fixed by the Commission at that time at six cents, wasn't it? A. Zimmerman's case was the six and a half cent case.

Q. I am talking about the first case. A. That was simply approving a rate that had been put in prior to that time.

Q. And the Commission said that the value of the service was six cents. If that basis were used in 1919

instead of 1913 you would get a very different result, wouldn't you? A. If that base were used you would, but I think the base is wrong.

Q. We think this one is. It's just a difference of opinion.

Q. Mr. Emmons, will you take your exhibit No. 30? The gasoline sales that are shown by the exhibit include gasoline sold for commercial vehicles as well as for vehicles that would compete directly with the United, don't they, passenger-carrying vehicles? A. That's the entire gasoline sales.

Q. There has been a large increase in that type of vehicles during the last few years? A. I don't know that the ratio has been any larger than the other. I am not ready to answer that.

Q. I don't believe you gave the Maryland and Pennsylvania and B. & O. R. R. report exhibit numbers, but I want to refer those for a moment? A. Yes.

Q. To what extent have fares been increased to offset the loss of passenger revenue caused by automobiles in the case of the M. & P. and B. & O.? A. I think they have depended on the freight rates which have been increased.

Q. In 1926, didn't the total operating revenues of the M. & P. as shown by page four of this report fall off .57%? A. .57%, yes.

Q. And operating expenses were cut 2.71%? A. Yes.

Q. Now in the same year, Mr. Emmons, 1926, your revenue decreased 4.2%, didn't it? A. I think that's right.

Q. And your expenses increased .65? A. We had an increased wage in that time.

Q. Taking your exhibit No. 31, doesn't that show a progressive decline in the cost of money to the Company and in the market yield of securities, from 1920 to 1927? A. Not in the cost of money to the Company.

Q. It goes from 9% to 7%, doesn't it? A. The cost of money to the Company was 7.32 as against the previous 6.93.

Q. But the first was 9 and 3/8's%? A. Yes, those were war period issues which have been retired, because we were able to get a lower rate of interest.

Q. Now let's follow them down and see if there is a progressive decline. The first one is 9 and 3/8's%? A. That's right, retired it.

Q. The second is 8.70%? A. That's right retired.

Q. The third is 6.75? A. Yes.

Q. The next 6.60%? A. Yes.

Q. The next goes up to 7.27? A. Yes.

Q. The next goes down again to 6.93? A. Yes, but that's still higher than the one second head and the one third head.

Q. And the last one is 7.32? A. Yes.

Q. Now let's take the market yield. The first is 8%? A. Yes.

Q. The next is seven and three-quarters? A. Yes.

Q. The next is six and a quarter? A. Yes.

Q. The next is 6.45? A. Yes.

Q. The next is 6.50? A. Yes.

Q. The last is 6.28? A. Yes.

Q. It's lower? A. But it isn't a question of market yield, it's a question of cost of money to the Company, and the last one is higher since 1922.

Q. This is not my exhibit, I didn't put the market yield on it? A. We have just told the whole story here.

Q. Why is the market yield there? A. Simply because we gave the whole figure. The market price and every thing.

Q. It does show a progressive rate of decline in both items since the past war period? A. Well, if you take those two which are really the reflects of the war period in 1920 and '21, it shows a decline there, but following

that, since 1922, there is no decline in the cost of money to the Company.

(The Chairman) Mr. Emmons, wouldn't the fact that the issues of January 1, 1924, which consisted of four million dolars of bonds, running for a long term of years, have a tendency to enable you to get that money at a lower rate than your short term notes amounting to only two and a half million dollars?

(The Witness) Yes, I think that's true, but that's about 7%, and certainly you have got to have something over the mere cost of money in order to have any credit.

Q. Mr. Emmons, taking the exhibit headed "Passenger receipts, actual day by day comparisons," I think that's No. 32, isn't it, for November, 1927 ? A. Yes.

Q. November was one of the highest months of last year, wasn't it in passengers, Mr. Emmons? A. I think that is true, yes.

Q. And it was the second highest in your experience for revenue, wasn't it? A. Mr. Swaine says it is a fact.

Q. Mr. Emmons, if no fare increase is granted by the Commission in this case, would the Company undertake a voluntary reorganization?

(Mr Howard) What is the object of that question?

(Mr. Tingley) The object is to get an answer.

(The Witness) I couldn't say about that myself, I have got a Board of Directors.

(Mr. Markell) Reorganization of what?

(Mr. Tingley) Of the securities.

(Mr. Markell) How?

(Mr. Tingley) Of the financial structure?

(Mr. Markell) Voluntary on whose part?

(Mr. Tingley) On the part of the Company.

(Mr. Markell) What's the Company have to do with it?

(Mr. Tingley) I am asking Mr. Emmons the question.

(The Witness) I can't see how you can conceive that we have no relief under the circumstances.

Q. Assuming that you don't? A. That is an assumption beyond belief.

Q. Will you make the assumption? A. I can hardly make such an assumption, but assuming that it does, assuming on a wonderful hypothesis on the assumption, that would be a question beyond me. It would have to be taken up with the Board.

Q. Mr. Emmons, do you think that a one-cent transfer charge would be a burden to the riding public? A. I don't think it would work out well, and it certainly wouldn't give us sufficient relief.

Q. Do you think it would be burdensome to the riding public? A. I think it would be objectionable to the riding public.

Q. Does that mean a burden as you are putting it or not? A. I don't think a cent is a burden to any person.

Q. Do you think that short haul riders would fall off under such a charge? A. Some people who take a transfer now and use it if a car is right there and walk if the car isn't there, it would certainly fall off.

Q. What extent of decline would you anticipate from that source? A. I say that I think this 20% given by Mr. Nodder is very problematical. I haven't any idea. I think it will be more. Mr. Wolf gives in his analysis about 50% of short haul people, and if it were 50% short haul people it would be somewhere between the twenty and fifty.

Q. Why do you think that more than 20% of the users of transfers would fall off under a one-cent transfer charge when only an additional 2% would fall off under a two and a half cent fare increase? A. It isn't that. It's just question of charging anything for a transfer, because as I have just remarked, when a person comes to a transfer point he gets a transfer whether he is going to use it or not. If the car is right there, he will use it. If

there is a charge for it, he will not take it, and if Mr. Wolf is right in his analysis of the long and short haul transfers of about 50%, I think nine out of twenty, then I would expect more than 20% to fall off.

Q. Assuming all of the testimony offered by the Company to be correct, the Company would not earn, under your estimate, an 8% return in 1928 under the ten-cent fare, would it? A. Not with the depreciation we have. We figure about 7.44, I think.

Q. And you and all of your witnesses have testified that you believe the Company is entitled to an eight per cent return? A. Eight percent return.

Q. If you get a ten-cent fare when will you go after the eight per cent return? A. We hope business will come back so that we will reach it.

Q. Suppose it doesn't? A. We will have to suffer along to see if it will.

Q. You will suffer along and not go after the eight per cent return? A. Not for the moment. We will see how things come out.

Q. And if the Commission gives you ten cents, how soon will you go after an eight per cent return? A.We woudn't do it the next day.

Q. The day after? A. Not quite so soon.

Q. You know that the rules of the Commission require that retirement be made at original cost, don't you? A. That has been the direction of the Commission in reference to writing off depreciation accounts, but Mr. Tingley, I cannot see how that can be held true, following a valuation because, as I said in my direct testimony at first, if you take a piece of property whose original cost is $50,000, the valuation cost given to it is $100,000 and you carry out the original rule of the Commission that $50,000 is only chargeable to depreciation account, and the other $50,000 has to be capitalized, it merely puts on that $100,000 another $50,000, giving a book value to that piece of property of $150,000, whereas if tomorrow you have another valuation made it would only be $100,000.

It's a condition I can't conceive of as being allowed to continue.

Q. Now in the case of the Mt. Washington bridge you give the reverse english of that, don't you? A. No, I don't see how I do. The Mt. Washington bridge has been used and used up, and because of Legislative action we have been compelled to abandon it.

Q. If you had been able to charge that bridge off on the basis of its valuation cost, and then when you took the bridge out you didn't have to replace it you would be ahead of the game, wouldn't you?

(Mr. Markell) Why certainly not.

(The Witness) I don't see how we would, because the value is included in for $86,000 in the valuation. We would certainly be back of the game, if we weren't allowed to write it off.

Q. Your Company didn't have to replace it? A. No, but it cost us $46,000 to put tracks on the new bridge.

Q. Mr. Emmons, I think you pointed out yourself that the yield to the investor has no significance in connection with the cost of money to the Company? A. Well, it goes together, but it's the cost of money to the Company that we have to cover.

Q. It's the cost of money to the Company that effects the rate of return, isn't it? A. Yes.

(Mr. Tingley) That's all.

CROSS-EXAMINATION (Continued.)

By Mr. Clark:

Q. Mr. Emmons, I think you pointed out 31 cities and towns, having a flat ten-cent fare? A. I did.

Q. Those cities and towns, I think you said, are in five states? A. That was the way I read them, I think or six. Six of them.

Q. Illinois, Maine, Massachusetts— A. New Jersey, New York and Pennsylvania.

Q. Which are the New York? A. Lackawanna.

Q. Then about half of these cities and towns are in the single state of Massachusetts? A. Just about half, 15.

Q. Half of them are in one state. Now the Illinois towns are all suburbs of Chicago and are served by the elevated? A. I do not think they are all served by the elevated. They are suburban towns of Chicago, however.

Q. Berwyn, Cicero, Forest Park, Maywood, Oak Park. A. They are all suburban towns of Chicago.

Q. And they are reached by the elevated? A. Reached by the elevated, but I think they are served by another railroad.

Q. But you spoke of the elevated when you spoke of a flat ten-cent fare? A. I am speaking of these cities that have a flat ten-cent fare, not the elevated.

Q. Didn't you testify when you were last on this subject that these towns were served by the elevated, and that you were here giving the elevated fare? A. I think I did say that I thought they were served by the elevated. Mr. Swaine has corrected me; that they are reached by the elevated but served by another Company—Chicago and West Town Company.

Q. Where did you get these figures? A. These figures came from the American Electric Association.

Q. Now the bulletin from which you take these figures, does it specifically say the ten-cent fares referred to are all surface fares? A. Mr. Swaine says it shows Chicago and West Town Railway, we are looking it up.

Q. Because I think the surface fares in those towns are the same as Chicago? A. Chicago and West Town Railway Company is the name of the Company operating it. Now that may be a subsidiary Company of the elevated, I do not know.

Q. Operating in all these towns? A. This is Oak Park, we will look at the rest of them.

(The Chairman) What is Cicero?

(The Witness) Cicero is Chicago and West Town. Forest Park is Chicago and West Town.

Q. It's just like Highlandtown is to Baltimore? A. Very closely connected. Outside of the city tho. The Chicago is given as the Chicago Rapid Transit Company, so it is a different Company. As I say it may be a subsidiary, I am not sure.

Q. I think I have ridden on the line in two of those towns, and the fare as I recall it is the same as Chicago. The elevated runs to them and on the elevated line it charges ten cents. A Yes.

Q. Now, Mr. Emmons, in only one of these cities, which is Boston, do the figures run into six, that is beyond 100,000? A. No, I think we gave you——

Q. One other town, Worcester, Mass., 193,000? A. Yes, that's right.

Q. The others are all in five figures? A. That's right.

Q. In these small towns, Mr. Emmons, the proportion of riders to the population is a great deal smaller than in large cities, isn't that true?

A. It's likely to be true on account of being small distances. There is more likelihood of walking.

Q. And there is more competition? A. Simply a walking competition, I would say.

Q. That's a very effective method of competition, isn't it? A. Often so, yes.

Q. I am afraid you will find it so if you get what you are asking for? A. No, people won't walk for two and a half cents.

Q. They walked for a cent?

(Mr. Markell) I walk for nothing.

Q. So that Mr. Emmons then, practically this ten-cent charge, which is in this small number of small towns compared with all the cities and towns in the United States

is practically a break town or a stand-by charge, isn't it? A. No, it's a charge that's supposed to cover the cost of service. I want to call your attention, as I said before, that we are not proposing a ten-cent fare as they are because we are still proposing a five-cent school ticket, a five-cent half fare, a commutation rate that is less than ten cents.

Q. Yes, I know, but I am speaking now of the city fare. A. I would not call it a breakdown charge, no.

Q. In these small towns, where the people can walk usually, and jump on the cars when they are in a hurry to get where they are going, you wouldn't call that a service different than the service in Baltimore? A. They are all trying to serve the people as best they can, and trying to have cars enough to take care of the people. It may be that some lines in these small towns are just as heavily patronized as on our lines. It's simply an extension of the number of lines.

Q. You would not point to these few small towns in the whole United States, found only, outside of Illinois, in only five states, as any sort of a criterion as to what the fare should be in Baltimore City? A. That isn't what makes the fare, it's the question of cost and the question of need of the Company.

Q. Just answer that question. A. No, I don't think controlling proof at all, but I am trying to show that it isn't an unusual thing for a ten cent fare city.

Q. It hasn't any important bearing on what the fare should be in Baltimore city? A. No, but the total cities that have a ten cent fare is 219.

Q. But that's a basic fare? A. Basis fare.

(Mr. Tingley) And many of them have tokens equal to or less than the fare in Baltimore.

(The Witness) Some of them have, very few.

Q. Some of these basic ten cent fare cities have even seven cent token fares, haven't they? A. They have all kinds of grades of fares and some of them have a nine cent token fare.

Q. What do you think is necessary in order to determine whether you can't get an increased revenue without jumping the fare? A. I am quite convinced, Mr. Clark, that any reduction of rate, even thru any form of ticket reduction of weekly pass reduction or anything like that will not give us the revenue that we need.

Q. Isn't it contrary to all present tendencies to refuse to recognize any difference between the casual or the constant rider or the necessitous and the casual rider? A. No, because all our riders are more or less constant riders. We have very few of these luxury riders nowadays. We used to have them before the days of the automobile.

Q. Do you think it's a just charge made irrespective of how often a person rides and how far he rides in the city? A. Yes, I think it's a just charge to be made to cover the cost of service.

Q. Why is it then that in only these two small towns that you find a flat fare? A. As I say I think there are going to be many more of them in a very short time. There is bound to be a time of a beginning. I recently saw a chart of the different rates of fare, starting with the five cents. The five cents gradually came down to a very dim point. The seven cents has grown, the eight cents has done the same. The ten cents which started from nothing and now has grown to be more of a—ten cent basis—portion of the whole rate of fare than any other kind.

Q. Haven't you, or I think Mr. Markell or some one on that side, haven't you referred to the fact that the people of Baltimore are now practically using the street cars as a standby service?

(Mr. Tingley) Break down service. Mr. Markell, in his opening statement.

(The Witness) To the automobile man it is a break down service, but 80% of the people of the city are riding street cars.

Q. Would you say now as President of the Company that people are using the United as a break down? A.

I do not think to 80% of the people who are using the United it is entirely a break down service. To a lot of people it is a break down service.

(Mr. Tingley) Didn't you say 75% at one time?

(The Witness) Between 75 and 80.

Some portions of the day it's 80%.

(Mr. Tingley) And the rush hour passengers are falling off three per cent. a year?

(The Witness) No, the rush hour isn't falling off at the rate of 3% a year.

(Mr. Tingley) But the passengers are.

(The Witness) The great question is that the peak of our service is still going up while the rest of it is falling off.

Q. Isn't it a fact that these 219 cities, including all the large cities of the country, have a basic ten cent fare and then a lower token fare——

(The Chairman) But they don't.

(The Witness) Some 30 of them have not.

(The Chairman) All of the large cities of the country, don't have a basic ten cent fare.

(Mr. Clark) I am speaking of these 219 including most all of the large cities in the United States.

(Mr. Tingley) But it doesn't. Most of the large cities have low fares.

Q. Isn't it true that these 219 cities having a basis fare of ten cents, and a lower token fare, find it fair and profitable to have a token fare in connection with the higher basic fare? A. No, I think they are trying it out to see if they can work thru with that. A good many of them have three tokens for 25c. Some have 11 tokens for a dollar.

(Mr. Tingley) Two for fifteen cents.

(The Witness) I don't see any.

(Mr. Tingley) There are some.

(The Witness) I think in the 219 there may be some, two for fifteen, but they are very few.

Q. What situation is there in Baltimore City which makes it just and reasonable to the public to impose upon them a fare of this kind, as you propose that does not exist in comparable cities? A. Well a great many things exist. I think we have a very difficult operating condition. Narrow streets, and a hilly town. We have the Park Tax that takes a great amount of our money and our situation is such that it's a necessity to have an increased income.

Q. You have a number of times referred to that Park Tax. Including the Park Tax your operating ratio is less than any other large city in the country? A. I think it is.

Q. That's no hardship. A. It isn't any criticism of us, I am sure.

(Mr. Clark) That's all.

(Mr. Tingley) Does that conclude your Rebuttal.

(Mr. Howard) Yes.

RE-CROSS-EXAMINATION.

By Mr. Benson:

Q. Mr. Emmons, these ten cent fares in these towns around Chicago, are they limited to those particular towns or do they carry them into Chicago? A. I think they are on a different line. They are limited to the towns. But if it should be part of the Chicago Elevated, serving them and there are some, I think, I think it carries them into the city. I would have to look that up specifiically for you.

Q. Will you do that for me. A. Yes.

Q. I think I asked you the other day that the city limits in Boston is not the boundary at all for the ten cent fare? A. No, the real city limits of Boston are very restricted.

Q. But it goes much further than five and three-eighths miles? A. Not the real city limits.

Q. But I mean the zone carfare? A. Some places it does. I looked that up and I found that the carfare goes out as far as Watertown, and some other towns that are out quite a distance, but for instance, you go out thru Brookline, you go thru a good many of the adjoining cities and still do not go as far as our city limits.

Q. I am asking about five and three-eighths miles, from the center of the city? A. I think there are some lines that go much further than that.

Q. Do you know of any that go as little as five and three-eighths miles from the city, the center of the city and pay two car fares? A. Not on the Boston elevated, but I know there are places out towards Newton where you have to go from one line to another.

Q. But the first fare from the center of the city is more than five and three-eighths miles from the center of the city in Boston? A. No, in the direction I am speaking of, out to Newton, the city limits is only about three and a half miles from the center of the city, but then there is another company, and you have to pay an additional fare in the Newton District, but there are certain directions in Boston, you can go into these adjoining towns, what is known as Metropolitan Boston which would be more than that distance.

Q. Under a similar arrangement Halethorpe would be in Metropolitan Baltimore? A. If there was a Metropolitan Baltimore.

Examination Concluded.

PEOPLE'S COUNSEL REBUTTAL.

Thereupon—

H. CARL WOLF,

a witness of lawful age, produced on behalf of the Public Service Commission of Maryland, having heretofore been duly sworn, according to law, resumed the stand in Rebuttal, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Tingley:

Q. Mr. Wolf, have you prepared an exhibit entitled "Results of operation under Sunday Pass in Cincinnati, Ohio"? A. I have.

Q. Have you also prepared as an exhibit a copy of an exchange of telegrams which was used as the basis of that exhibit? A. I have.

(Mr. Tingley) I ask that those be introduced in evidence, the first to be marked People's Counsel Ex. No. 53 Rebuttal, and the second to be marked People's Counsel Ex. No. 54, Rebuttal.

NOTE: Papers above referred to are here filed in evidence and marked People's Counsel Exhibit No. 53, Rebuttal; and People's Counsel Exhibit No. 54, Rebuttal.

Q. Will you explain those exhibits, Mr. Wolf? A. I think they probably speak for themselves. No. 54 shows first the telegram that was sent to Mr. Edgar Dow Gilman, director of Public Utilities in Cincinnati, Ohio, asking for information concerning the working of the Sunday pass in that city.

The second part of that sheet shows Mr. Gilman's reply.

Q. Suppose you read those two. A. The telegram to Mr. Gilman dated November 28th, is as follows:

NOTE: Said telegram here read.

Mr. Gilman wired me on November 28th, as follows:

NOTE: Said telegram here read.

Those details to which he refers have not as yet been received.

Exhibit No. 53 shows a tabulation of these figures and a comparison of revenue passengers in 1926 and '27, on the 268 week days and the 45 Sundays, showing that the average number of revenue passengers per week day increased from 256,860 to 266,550 and that the average revenue passenger for 45 Sundays increased from 163,900 to 197,700. I might say that the percentage of increase on week days, was 3.75; and the percentage of increase on Sundays was 20.1.

(Commissioner Harper) The number of passes sold on Sundays, does that mean the average number?

(The Witness) Yes sir, for any one Sunday.

(Mr. Markell) They just say about 12,000. They evidently don't know, and the about five and a quarter cents.

(Commissioner Harper) I understood they had their conductors keep a check on the number of passes used by the riders.

(Mr. Markell) But this doesn't show it?

(The Chairman) This simply shows the number of passengers carried on Sunday. It doesn't show the revenue on Sunday?

(The Witness) No sir, without the revenue.

Q. Mr. Wolf, that shows that passengers have been increasing even on week days in 1927 over 1926? A. It does to the extent of about three and three-quarter per cent.

Q. It shows that they have been increasing on Sunday at a much more radical rate of progression? A. Yes, something over twenty per cent.

Q. Have you any further comment to make on those exhibits, Mr. Wolf? A. I suppose that the Commission noted that the Sunday pass was put in effect on Novem-

ber 1926 and that therefore all the figures for 1927, for Sundays, were the result with the Sunday pass effective.

Q. Mr. Wolf did you see the one-third of a series of articles that Mr. Waltman that were published in the Baltimore Sun? I think the last third was published last Sunday? A. Yes, I did.

Q. Did you know that Mr. Waltman quoted the Vice-President of the Company that the increase in revenue passenger was largely attributable to the Sunday pass? A. I think that was the remark in that article, yes.

Q. Mr. Wolf, do you recall that Mr. Emmons testified that he did not think that a decrease in the use of a utility service under higher rates would indicate burdensomeness of the rates? Have you any comment to make on that statement? A. I think that's been covered pretty well today and that particular statement refuted in Dr. Hollander's testimony when he spoke about the marginal riders.

I just have this one comment to make of that, also, that it seems to me only natural that some decrease in riding would result of an increased fare and vice versa, no matter what the change nor at what point it took place when one considers the family budget side of the story.

It's pretty well established that the average family or average utility customer spend about the same amount of money irrespective of the cost of the service, particularly as applied to gas and electric utilities.

Q. How is that shown, Mr. Wolf? A. The average gas customer in this state spends from 30 to 45 dollars depending somewhat on the locality, per year for his service, and the average electric customer slightly more. The average family using a street railway spend something like twice this amount. It's also shown pretty well that the amount of money appropriated by any one family for this class of utility service stays pretty well the same. It's an unconscious attempt to keep within that budget, hence when the price of the unit goes up, the number of units used goes down.

Q. What data have you in support of that statement,

Mr. Wolf? A. I haven't any figures here, but I think a study of any utilities service, gas or electric will bear that out.

Q. Is that shown in the annual report, or how did that come to your attention? A. That could be shown from the annual reports, yes.

Q. And you have had an investigation of that matter and that is your conclusion from it? A. Yes.

That's a fact you consider almost every day in adjusting gas and electric rates.

Q. Mr. Wolf, what comment have you to make on Mr. Emmon's criticism of People's Counsel Ex. No. 36? I think first of all he criticized the use of the year 1922 as compared with 1927? A. Well, the year 1922 was selected, as I said in my testimony in Chief, simply because of the close analogy between the amounts of the operating revenues in 1922 and 1927 as estimated. Just to recall one statement he made as to the $1,200,000 which I show at the bottom of that sheet in economies claimed by the Company since 1922 that that erroneously contained or included some taxes, I might say that it did erroneously include some taxes to the extent of four thousand dollars out of $1,200,000.00.

Q. That was the extent of the erroneous inclusion of taxes? A. That's right.

Q. Were you harboring any dark designs against the integrity of the Company when you prepared that exhibit? A. No.

Q. Have you prepared an exhibit entitled "Value of Service in 1927, compared to value found by Commission in January 1919"? A. I have.

(Mr. Tingley) I ask that be introduced in evidence and be marked People's Counsel Ex. No. 55, Rebuttal.

NOTE: Statement above referred to is here filed in evidence and marked People's Counsel Exhibit No. 55, Rebuttal.

Q. Mr. Wolf, this Exhibit No. 55 was prepared as a

modification of Company, exhibit No. 29, wasn't it? A. That's right.

Q. Will you explain the exhibit to the Commission? A. This exhibit is based on the statement of the Commission read by Mr. Tingley this morning in Case No. 1583, found on page 58 of the 1919 Annual Report of the Commission, to the effect that the Commission had concluded that under existing conditions six cents as the basic rate for adults was the fair worth of reasonable adequate street railway service to the community served by the Respondent.

Assuming that six cents was the worth of the service in January 1919, I attempted to draw from that, on the factors presented in the Company's Ex. No. 29, the worth of the service at the present time.

Platform wages, for example in January 1919 were 45c as against 53 now, so that if the index were taken as one hundred at that time, the present index would be one hundred and eighteen as shown at the top of the page.

Operating expenses, per car mile, average for 1918 and 1919 were 23.3 cents, whereas the average for the first ten months of 1927, is 28.6 cents, giving a present index of one hundred and twenty-three.

The cost of living in Baltimore as shown by the United States Bureau of Labor Statistics was approximately one hundred and eighty for in January, 1919, and one hundred and seventy-seven now, showing a decline and a present index figure of 96.

The all commodities wholesales index showed a similar decline to a present index of seventy-five, as compared with 1919.

The average of these four factors shows an index from one hundred to one hundred and three. Applying these various indices to the six cent rate, used by the Commission, as representing the value of service would give a present value of service, based on platform wages of 7.1 cents, on operating expenses per car mile of 7.4 cents, on the cost of living in Baltimore 5.8 cents, and on the

all commodities wholesale index, of 4.5 cents, the average of the four factors above would be 6.2 cents.

Q. If the Commission was correct in 1919 as to the value of service at that time being six cents, on four out of the five bases used by the Company in its exhibit No. 29, no increase in fare would be justified, is that correct? A. That's right.

Q. Why was the union labor index not used in the exhibit, Mr. Wolf? A. Because the Union Labor index is not in any way an index for Baltimore.

Q. Now in any way an index of what? A. Labor rates.

Q. And of the paying ability of the average person using the street cars? A. I think not.

(Mr. Tingley) The Witness is with you Mr. Howard.

(Mr. Howard) We have no questions.

(Mr. Tingley) That's our case if the Commision please.

(The Chairman) Mr. Clark, have you any questions?

(Mr. Clark) No sir.

(The Chairman) Mr. Toole, have you any questions.

(Mr. Toole) I have none.

(The Chairman) Senator Benson, have you any questions?

(Mr. Benson) No sir.

(The Chairman) We will then adjourn this hearing until December 8th, when we will hear argument and receive the briefs of Counsel.

Examination Concluded.

NOTE: At 5.00 o'clock P. M. the Commission then adjourned until Thursday, December 8th, 1927 A. M. for the purpose of hearing argument.

EVIDENCE FROM RECORDS IN FORMER CASES BEFORE PUBLIC SERVICE COMMISSION OFFERED IN EVIDENCE IN THIS CASE.

A.

TESTIMONY OF ALLEN G. HOYT IN THE GAS COMPANY RATE CASE, 1926, No. 1915—16TH DAY, APRIL 19, 1926.

(Mr. Miles) If the Commission please, I would like the appearance of Mr. Thomas J. Tingley, the People's Counsel, appear in the record in the case.

Thereupon—

ALLEN G. HOYT,

a witness of lawful age, produced on behalf of the Consolidated Gas Elec. Light & Power Company of Baltimore, having first been duly sworn, according to law, was called to the stand in rebuttal, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Markell:

Q. Mr. Hoyt, where do you live? A. New York City.

Q. And what is your business? A. I am Vice-President of the National City Company.

Q. And what is the business of the National City Company? A. The National City Company is an investment banking institution which deal in securities.

Q. And does it deal in public utility securities? A. It deals in public utility securities among others.

Q. Can you give the Commission some idea of the value of the investment business that the National City Company does in a year? A. The National City Company either alone or in participation with others shares in a very substantial portion of the major senior public utility

financing in the U. S. The volume aggregates several hundred millions per annum.

Q. Several hundred million of utility financing alone? A. Either alone or with associates.

Q. Of utility financing? A. Yes.

Q. And have you any idea of what other general financing you do, outside of that? A. Well it's a very large amount, even larger than the other class of financing which we undertake.

Q. How long have you been vice-president of the National City Company? A. I have been with the National City Company since 1916.

Q. And what was your business before 1916? A. I was an officer and director of N. W. Halfey & Company, Inc., which was an investment banking house which specialized in public utilities. N. W. Halfey & Company not only financed public utilities, but it controlled certain public utilities. It selected the management and in that connection I was a director of some of the public utilities which N. W. Halfey & Company controlled.

Q. How long were you a director and officer of N. W. Halfey & Company? A. From 1907 until 1916.

Q. And how long then have you been personally in the business that has been directly related to public utilities and the securities of public utilities? A. Well in the neighborhood of 20 years.

Q. Are you familiar in a general with the Consolidated Gas Elec. Light and Power Company of Baltimore? A. In a general way, I am.

Q. I suppose you have seen its annual reports and are in a general way familiar with its financial statements? A. I am.

Q. Its capitalization? A. And its activities.

Q. Will you tell the Commission whether, speaking of utilities generally, and speaking especially of such a utility as this Company, the market for stocks and bonds and the avenues and channels of financing are broadly

speaking, local or general; I mean by general country wide? A. The larger issues in financing we usually have a syndicate in which dealers all over the U. S. and sometimes abroad participate, where it's necessary to raise large amounts of capital the market is national rather than local.

Q. This Company would be no exception to that statement? A. I don't think it would.

Q. Do you know whether this Company's securities have been marketed nationally or locally? A. I know that the houses handling the bonds of this company have offices in many of the financial centers of the United States.

Q. From your experience with public utilities and with the securities of public utilities, do you or do you not feel in a position to express an opinion as to what rate of return would be required and expected by investors in order to induce them to invest in such a utility as this Company? A. I think by experience justified me in having an opinion based on that experience regardless of the rate.

Q. If investors were going to buy or build a property like that of this Company, what amount would they feel, in your opinion, that the property should earn, in order to induce them to invest their money in the purchase or construction of such a company? A. I think the expectation in order to enlist the necessary capital would have to be at least 8%.

Q. Taking into consideration other classes of investment, with the comparative risks and return their own, the rate of return generally required to secure proper credit for borrowing money and financing its operations, what should such a company as this Company be permitted to earn in order that it might compete successfully with other business and be on a parity with them, in your opinion?

NOTE: Question here reread by Stenographer.

A. I think the return should be 8% in order to permit it to compete with other lines of industry for capital.

Q. The question you have just answered was put without reference to particular localities. You are familiar of course with local conditions in New York? A. I am.

Q. So far as you are aware are any higher returns necsary in New York than in Baltimore on investments generally? A. I don't think they are. You take the major cities, your stronger companies in the major cities, stronger public utility companies in the major cities, can finance on about the same basis, and to attract the necessary capital to enable these various companies properly to function, I think the return in the larger cities for the better companies woud be very similar. The reservoirs after all are national and not local.

Q. The last question that was asked and answered by you, involving consideration of other classes of investment without reference to localities, would be answered in the same way so far as New York is concerned A. It would.

Q. And you have already said, so far as you know there is no reason why any lower return would be adequate than in New York? A. No.

Q. New York of course is the financial center of the world? A. That's where the largest amount of securities are of course in the first instance underwritten.

Q. What in your opinion would be the lowest rate of return that such a Company as this should be permitted to earn on the value of its property in order to make that return equal to that generally being made at the same time, and in the same general part of the country, on investment in other business, undertakings which are attendant by corresponding risks and uncertainties. A. I think the rate would have to be 8%.

Q. Will you tell the Commission in your own way what you consider to be the outstanding elements of risk and the advantages and disadvantages in a utility business that leads you to the conclusion that at least 8% would be necessary to attract capital to such a business? A. Well, I think in the electric business there has been a change in the situation in the last twenty odd years. The electric companies now sell a very large part

of their current to industries. Years ago electric companies were light companies, and in periods of depression people had to have electric lights, the earnings were very stable then, but now I believe in a period of depression the electric companies would suffer materially if the steel companies and the automobile companies and other large users of power cut down on their requirements.

Now a public utility is never guaranteed a return, its only permitted to earn a return if it is there, and I say that when an electric company in the country is very prosperous, and when the industries are using a maximum amount of power, if the electric Companies are not permitted, under such conditions, to earn more than 8%, they are running risks of earning very much less than 8, in a period of depression, because certainly under such conditions the Commission couldn't be expected to say well, business is very bad now, and this company is not earning 8%, they are not selling much power for industrial uses, therefore we will boost the rates for electric light where the people have got to have it under a period of that kind, so I say that there is a hazard in the electric light and power business that is inherent to the business, and yet is not evident on the figures.

For the last ten or more years the history of the electric light and power companies has been very satisfactory, but electric light and power companies have been very able, I think, in finding methods of selling their current. One of the reasons that we attribute to industrial supremacy of the United States, as compared to Europe and other countries is the fact that behind each worker is a very large amount of power, its being very important, and this power has been sold at very low rates, and that had been very important in cutting the costs of all manufactured articles where power is used. It is one of the things which accounts for the low prices under mass production in this country as compared to other countries, but there was a void there, there were a great many isolated plants, and the electric companies were able to go to these manufacturers having isolated plants and take on the business and retire the isolated plants but that can only go so far, the void will be filled up, and the result will be, when we do have a business

depression, the electric companies are going to suffer in a way that they never suffered before, and there is a real hazard there in my opinion.

Q. In that respect the very progress that electric companies have made in expanding their business and reducing rates is in itself a new hazard of the business? A. An element of danger no doubt.

Q. Because it makes full progress to a large degree in the hazards of industrial business? A. It does.

Q. Considering industrial business generally to mean unregulated industrial business as contrasted to utility companies. Do you know any industrial business in which the maximum earnings are anything like 8%? A. I don't think of any at the moment. In an industrial business you expect to make, 15, 25 or 40 per cent in a year of prosperity on your investment.

Q. And it is those facts of those large unlimited gains that offset the risks in that business. A. Offset the risks because of course in years of depression they earn very little.

Q. What would you say about the banking business, the range between making the minimum return of capital invested in a banking business? A. I don't understand exactly your question.

Q. I mean would you give any idea of what the maximum return that is obtained by successful banks on their capacity as contrasted with——

(Mr. Miles) Are you talking about investment banking houses.

(Mr. Markell) No, Commercial banks.

A. Commercial banks when they are organized, undoubtedly the organizers hope that they will make ten to fifteen per cent. on their capital. Some of them do.

Q. Many of them do, don't they? A. Many of them do as they develop the business.

Another hazard I think in the electric light and power business is the fact that if a change does occur in operat-

ing conditions and costs go up the companies are confronted with great difficulty in promptly advancing their rates to overtake the increase in the cost of operation. There is always a very serious lag under conditions of that kind which is against the company, practically always. The costs go up but the increase in rates come along perhaps a year or two years or three years later after those changed conditions.

Q. And an industry of course—an industry without regulation, they put their price right up and make the consumer pay the difference toward the increased costs.

Q. Now, when you speak of a return of 8% as the lowest limitation that would permit capital to go into business, will you tell the Commission just what you mean by a return. I mean do you mean by that in it is a maximum, in what sense it's minimum or an average? A. I think it would have to be an average return. What I mean is this: I don't believe that you could go out and raise a very large amount of capital to buy or construct a company similar to this unless that capital had a reasonable grounds of expecting a return on the average of at least 8%, and if you couldn't raise a large amount of capital to build or buy a situation of that kind, certainly it seems to me it's discrimination to the capital already invested in the property, which cannot easily be withdrawn, unless the rates were such and were similar and were equal to that with which would be required to exact that capital when you were starting a new one.

Because a company can borrow a certain amount of bonds at 5 or 6 per cent., or preferred stock from 6 to 7, I would say had no relation at all to the return which must be spread over the whole enterprise.

Q. Assuming that a company is allowed not more than a certain return by a Public Service Commission that is allowed it in the sense that they will be permitted to reach that and not exceed it, what would normally be the relationship between a maximum of that kind and what the company would actually realize in a period? A. Undoubtedly, under adverse conditions, the company would realize much less than the rate fixed for periods of great activity and favorable conditions.

Q. So that unless a rate of return was fixed as an average rate of return, so that the Commission would allow the Company to get that amount in the long run, of course the average that they actually get will be less than any fixed maximum? A. Bound to be less.

Q. Do you consider the present or the year 1925, viewed from the peoint of view of general business conditions, as good, fair or average? A. It was a year of very good business, very satisfactory conditions.

Q. You mean 1925? A. Yes, 1925.

Q. Do you have any reason to anticipate better conditions than in the year 1925? A. I wouldn't think so. I think businessmen in general would be pretty well satisfied if in 1926, they duplicated their returns for 1925.

Q. Now, I asked you those questions with reference to business generally; how would you answer them with reference to utility business? A. I would say they were very favorable figures for the utility companies. The country was generally prosperous the people used the service of the utilities with a good deal of lavishness, and the industrial concerns used a very large amount of current.

Q. Suppose a Commission were to establish a maximum rate of return based on present conditions, that is the acutal conditions in 1925, and conditions for the year 1926, as far as they can be forseen at the present time, what in your judgment would be the relative probabilities of that return being acceded or falling short of by future changes in business conditions? A. Well, I would say that the chances were at least equal to the hope of benefit that the return would be lower. I don't know, there doesn't seem to be any very serious clouds on the financial horizon at the present time, but it seems to me there is only a question of time when we will have some recession in business. Now, just when that will occur I can't tell, and when we do have a recession in business I say that will have an unfavorable effect on the electric light and power companies in these large industrial loads.

Q. You have already referred to the difference be-

tween maximum and average return and to the element of lag involved in getting increases in rates. What in your opinion would be the effect of any particular rate on the attraction of capital, notwithstanding the conditions you have just referred to a practice of regulation were to develop which would involve adjusting rates downward to limited maximum as often as say three times in a period three years? A. Well, it's great benefit to any industry of course to have the rates stable and not subject to frequent reduction. It's fortunate, I think be for the great benefit of the Company and the frequently disturbed. It affects all the customers of the company and its affects of course, has a tendency to reflect on the credit of the Company, and what would I thing be for the great benefit of the Company and the public and investors as well would be as large a measure of stability in the rates as is possible.

Q. Are you familiar in a general way with this enterprise that's commonly known as the Conowingo development? A. Yes.

Q. And with the financing of that enterprise? A. In a general way, although we were not identified with it, so I don't know it intimately.

Q. Will you tell the Commission whether or not in your opinion it would be or would have been possible to attract capital in an amount of upwards of fifty million dollars investment in such a project on the understanding that the return on the value of the property in which such investment is made shall be limited to a maximum of 7% if the financing were done as a strictly independent venture, not supported by the credit of the Philadelphia Electric Company through a lease or any other contract more or less in the nature of a guarantee? A. Well, it's my opinion that it would have been impossible, absolutely impossible to have enlisted a large amount of capital necessary for that enterprise as an independent undertaking under a regulation or limitation which would have meant that the return on that capital invested should be limited to 7%. I feel confident that no such amount of capital would have flowed into the project under conditions of that kind.

Q. Why wouldn't it? A. Because the prospective rewards wouldn't begin to offset the hazards of the undertaking. As a matter of fact, the way it was done there were very few hazards. Here is a contract with the Philadelphia Electric Company which provides, as I understand it, a contract at least of certain payments, and the Philadelphia Electric Company is obligated to make those payments, and until you might say the common stock of the Philadelphia Electric Company is wiped out those payments will be made, and that gives the securities of the Company many of the attributes of the bonds and the Preferred Stock of the Philadelphia Electric Company itself, and of course with that obligation, and with the strong credit behind it, it was possible to raise the money, but of course it would be possible for the Philadelphia Electric Company to raise a very large amount of money in the neighborhood of 5% if it wanted to sell its bonds.

Q. That would in effect be giving it a preference over the whole general investment of the Philadelphia Electric Company? A. It does give it a preference to a certain degree, it certainly gives it a preference over the dividends on Common Stock.

Q. So what the Philadelphia Electric Company would be able to finance a part of its enterprise in that way for would depend very largely on the amount of return that the Philadelphia Electric Company was getting, not from that particular enterprise but from its whole business? A. Well, the rate at which you could raise the capital for this project would depend of course upon the general credit standing of the Philadelphia Electric Company; as long as that was high it could raise the money at a relatively low rate, because the credit of the Company is behind the project.

Q. So that that financing on the credit of the Philadelphia Electric Company therefore depends not on the return that will be yielded on the Conowingo project, but ultimately depends on the entire return received by the Philadelphia Electric Company on its whole property? A. That is true in my opinion.

Q. There has been some testimony in this case show-

ing that this Company has been able and is able, or at least has been able within the last year to borrow money on its bonds at a very favorable rate, in the neighborhood of 5%?

There is also testimony to the effect that barely five years ago, in the beginning of the year 1921, this Company paid as much as 8.3% actual cost for borrowed money?

You have already referred incidentally but I will ask you again to state to the Commission specifically what in your opinion is the difference between cost of borrowed money and return on property as a whole? A. Well, the cost of borrowed money only has an incidental bearing on it. A company with a very large amount of collateral, with very large assets, could borrow of course a small amount of money at a very low rate. However, that wouldn't mean that you could attract all the capital necessary to buy or create the undertaking unless you had a much larger return, a much higher return upon the total investment than the rate at which you could borrow a relatively small amount of money on bonds against deposit.

Of course, if these public utilities were not able to finance their bonds at relatively low rates, if we will say they had to have all of their capital obligations in the form of stock, you would have to have a rate of return of much higher than 8% in order to permit them to functiton, in order to permit them to attract capital. They would be earning a per cent. on the stock of the company and pay out all its earnings in dividends, they might be paying six or six and a half per cent. and the stock wouldn't sell at a price which would equal the investment, but because they can, because these utilities can mortgage a certain part of their property and raise some capital at lower than 8% it is possible for the companies to function and to attract capital with a return spread over the whole undertaking of 8%.

Q. Let me pursue that thought that you just brought out a little further. Suppose that a company were to be formed for the purpose of taking over or constructing, either one, an enterprise such as this Company as a

whole, if a new company either to buy or build such a property as our property were to be absolutely free of bonded debt and were to undertake to finance on stock alone, would it or not be possible to finance such an enterprise on stock alone with the understanding that the company would be allowed to earn not more than 8% on the total value? A. In my opinion it would be impossible to finance the company under such circumstances.

Q. So that it's only the ability to borrow money at substantially less than 8% that makes it possible for a company to do the necessary stock financing to exist on 8% and to establish a credit to borrow at lower rates? A. That is true. The earnings per share may go up well above 8% on the Common Stock, but with all the hazards that the Common Stock takes it must always be subject of course to refunding the obligations of the company. Frequently there is ahead of this Common Stock Preferred Stock as well, and therefore it increases the hazards in the ownership of the Common Stock, and the earnings per share on the Common Stock must be under such conditions in order for the stock, if it has a par value, to sell at par the earnings per share must be well in excess of 8%.

Q. So that the greater the amount of Prior Preferred Stock and bonds the greater the hazards of the Common Stock? A. Undoubtedly.

Q. And the greater the hazards of the Common Stock and the smaller the amount of the Common Stock the greater the earnings must be on that? A. The greater the earnings must be on that to offset the increased hazard.

Q. And vice versa, the greater the earnings on the Common Stock and the greater the Common Stock equity behind the bonds the cheaper you can borrow this money? A. The better protected are the bonds and therefore the lower rate or net yield at which they can be floated.

Q. Now, looking at the matter in the long run, what one element, if any, would you say is the most important element in the financial condition of a utility that affects the value of these bonds and the cost of money and the

price at which it can issue stock? A. Well, nearly all values I think, get back to a question of earnings. It's a question of earnings that make credit. Now, with that we must have, in order to get the greatest advantage out of those earnings, a sound financial structure; satisfactory earnings plus a sound financial structure give the company very high credit.

Q. What do you mean by sound financial structure; ratio of stock to bonds? A. Ratio of stock to bonds, mustn't have too high a funded debt, too large a percentage of Preferred Stock, or too high a percentage of debt and Preferred Stock.

Q. The Financial structure itself, or at least the ability to improve the financial structure is affected by earnings? A. Very likely to be, because with satisfactory earnings it permits the company to sell additional Common Stock or additional Prefrreed Stock and build up the margin behind the bonds, and also of course it means probably a larger investment of surplus in the property, surplus earnings above the dividends declared, and all of these influences tend to improve the credit of the company.

Q. There is evidence in this case that from the 31st of January, 1921, which seemed to be the low point in this Company's condition as to earnings and financial structure, 77.7% of the entire capitalization of the Company was represented by bonds and indebtedness, and 23% by Common Stock, the Company at that time having no Preferred Stock.

What would you say as to that financial structure; would you consider it good or bad? A. I know of very few companies with as high a percentage of bonds to total capital as that which enjoys good credit. In other words, that is not a conservative financial structure.

Q. Now, will you tell the Commission how, in your opinion, it would have been possible to improve that financial structure without a good showing of earnings to make stock financing possible? A. I would think it would have been very difficult for the Company to have continued to raise capital under such conditions. Certainly the bonds, with a structure of that kind, would

have to be floated at a high rate of itnerest, and the stock would have to show a very high rate per share in order to justify purchase of that stock in view of the hazards involved, the hazard due to the fact that you preceded it by a very large mortgage debt. Strong companies in New York, like the Brooklyn-Edison and New York-Edison, Consolidated Gas, and even the Commonwealth-Edison of Chicago, the debt runs about thirty to forty per cent. of property value.

Q. There is also evidence in this case that at the end of the year 1925 that is, on the 31st of December, 1925, the financial structure of this Company has changed so that at that time 61.68% of its capitalization was represented by bonds, 14% by Preferred Stock and 24% by Common Stock. How, in your judgment does that financial structure compare with the structure in '21 that I referred to in the previous question? A. It's a much improved financial structure and naturally the securities, the bonds, all of the securities in fact of the Company should now sell on a better basis than they did in 1921, assuming the same general market conditions.

Q. There is evidence in this case pending to show that for some four years, say from the 1st of July, 1917, to the 1st of July, 1921, this Company had made virtually no additions to its surplus; something in the neighborhood of only one hundred thousand dollars in a period of that length.

And since the calendar year 1921, up to the end of the calendar year 1925, the earnings have been sufficient to make substantial additions to surplus, so that the surplus has increased at least six or eight million dollars between the 1st of January, '22, and the 1st of January, '26?

What effect in your opinion would that accumulation of earnings have on the ability to borrow money? A. Well, a conservative dividend policy usually tends to improve the credit of a company. I can't see that it would make any difference really in the price at which the bonds would sell if the dividends had been higher but the Company had sold an additional amount of Common

Stock, the equity would have been there at any event. The earnings and the surplus belong to the stockholders.

Q. I mean asuming that all dividends had been the same throughout all that period except the last few months of '25, and the difference is a difference in earnings, so that from June 30th, 1917, to December 31st, 1920, the Company added and was able to add only about $150,000 to its surplus, but in the latter period, from the end of 1921 to the end of 1925, the Company was able to add by the same dividend policy between six or eight million to its surplus? A. That policy should help the credit of the Company.

Q. And the improved earnings would naturally help it? A. The surplus must have been derived I take it by reason of the increased earnings.

Q. What relation do earnings have to do with the price at which Common Stock can be disposed of? A. Earnings are very important of course. It's the earnings per share I think that is perhaps more important than the amount distributed in dividends. I know we have one public utility in New York that pays no dividend and never has paid a dividend and yet the stock sells above $100 per share, but it's the earning per share, present and prospective, that have a great influence upon stock, and the investor, in buying the stock, he either takes a low dividend knowing that it's so well protected that it's almost like a bond, or he buys the stock paying a low dividend we will say at a relatively high price, feeling as I say that that is protected or will come higher in the future. It's the influence.

Q. Whether the increased dividends come or not his own capital investment is increasing? A. His own capital investment is increasing.

Q. There is evidence in this case that this Company, beginning with the last quarter of the year 1925, paid dividends on its no par Common Stock at the rate of $2.50 a share, and in the course of the same quarter the Company issued a substantial amount of its no par stock, approximately five milion dollars in proceeds, at a price of $35.00 a share, which was equivalent to 40%

increase over the best price at which the company had previously issued Common Stock, and 40% over the par value of the former stock which had been converted into no par stock.

There is also evidence to the effect that in the year 1925, the Company earned $6.00 a share on its Common Stock, and that under the Company's estimates under existing rates it will earn $5.00 a share on its Common Stock in the year 1926.

It has been proposed by some of the counsel and witnesses in this case that rates should be cut so that the prospective earnings on the Company's Common Stock would be cut from $5.00 a share or $2.50 more than the present dividend to say $3.75 a share or one-half the present margin over dividend.

Will you tell the Commission what in your opinion such a reduction in earnings, even assuming that there is no reduction in the Company's dividend, would have on the value of its stock and the ability to finance through additional Common Stock and the price at which financing could be done? A. In my opinion stock under such conditions could only be sold in relatively large amounts at a very much lower figure than the price which I understand the Company received.

Q. Than the $35.00 mentioned in the questioned? A. It seems to me now you have no par value stock here, but the book value of your stock is now about, as I figure it, $37.00, that is to say I am taking the capital assigned to it plus your surplus, and if you were to recapitalize now, and get out stock we will assume with a par value, and wanted to keep the same number of shares, you would get out a par value stock of about $37.00, you would have difficulty in selling, even on your present earnings, your stock at its true par today in large amounts.

Q. Forty-seven and a half? A. Yes, I think so, which gives the true par of your stock under existing conditions, and certainly it seems to me that it would be held unjust to the stockholders to take such action that would depreciate its value far below its true par.

Q. You think there would be difficulty in recapitalizing large blocks even at thirty-seven and a half? A. Within a large amount. I think you can just about do it on your present rates and your present rating, but I say if you decrease it now it would have to be very much below par, and I would say even today I think $35.00 is about as high as you could get, whereas the true book value is about thirty-seven I think.

But the suggestion has been made that we are suffering from an unnecessary accumulation of surplus earnings and that the amount of earnings on Common Stock over and above the amount distributed as dividends be cut in half, and what effect in your judgment would that proposed change have on the ability to dispose of stock at say it true par of thirty-seven and a half? A. I think under such conditions it would be impossible.

Q. It has been suggested in this case that this Company has now accumulated such a surplus, and is now accumulating a surplus so rapidly and to such an extent under the conditions mentioned in previous questions, to wit, earnings in 1925 of $6.00 a share, and prospective earnings of $5.00 a share in 1926, on the Common Stock on which $2.50 is paid as dividends, and it is further suggested that our financial condition is now so good, and the Company is able to borrow money at such a low rate, that all of these circumstances taken together indicate that conditions have so changed that the Company ought now to be allowed a lower rate of return on its property than it was allowed as recently as three years ago, and that that rate of return ought to be cut for the express purpose of cutting in half this annual accumulation of the difference between $5.00 and $2.50 a share on Common Stock.

I will ask you to assume, as has been suggested in previous questions, that the present condition of the Company its ability in the latter part of 1925 to raise about five million dollars on no par stock at $35.00 a share, its ability in the same year to put out bonds at a cost of approximately 5% as compared with its condition in the year 1921, when at the beginning of the year it had to pay 8.3% as the actual cost of borrowed money, when

for a period of at least three and a half years it had actually been earning less than 6% on its property, and that that condition in 1925 had followed a period of four or five years from the beginning of 1921, during which period the Company received a substantial increase in rates in the middle of the year 1921, and during which period the Company had improved its financial structure by issues of Preferred and Common Stock with the result as two percentages indicated in a previous question, and during which period the Company, after keeping its surplus at a standstill from 1917 to 1921, had added some six or eight million dollars to its surplus.

I will ask you to assume to be true the various matters recited in this question as being supported by evidence in this case, and then to tell the Commission to what extent, in your opinion, this improvement in financial conditions depends on the Company's receiving and continuing to receive a fair return on its property, and whether or not in your opinion it indicates that the financial condition is such that the fair rate of return ought now to be lowered or could be lowered without impairing its very financial condition and in answering that question I will add this further hypothesis to wit, that since the low point, beginning in 1921, this Company has earned during the calendar year 1921, in the neighborhood of 6½% on its property, in the year 1922 a fraction over 9%, in the year 1923, a fraction over 9%, the rates being reduced by order of the Commission in the middle of the year 1923, in the year 1924, 7.7%, in the year 1925, eight and about six-tenths per cent., the Company voluntarily making a rate reduction toward the end of 1925, and for the year 1926, the Company estimates a return of about 7.7%?

(Mr. Miles) Now, I dare anybody to ask the Stenographer to re-read that question.

NOTE: Part of previous question here re-read by stenographer, as follows:

"Q. • • • I will ask you to assume to be true the various matters recited in this question as being supported by evidence in this case, and then to tell the Commission to what extent in your opinion this improvement in finan-

cial conditions depends on the company's receiving and continuing to receive a fair return on its property, and whether or not in your opinion it indicates that the financial condition is such that the fair rate of return ought now to be lowered or could be lowered without impairing its very financial condition. * * *"

Q. The question is this, Mr. Hoyt; assuming to be true the various matters recited in the question, I will ask you to tell the Commission and give your reasons whether in your opinion these facts indicate that the company's rate of return is now too high and it should and could be lowered without injuring the company's financial condition, or does it indicate that the existing financial condition depends on the rates of return and should not be lowered?

(Commissioner Harper) Is it a proper part of the hypothesis something that's going to happen; aren't you dealing with actual facts in the record when you base a hypothetical question——

(Mr. Markell) Hypothesis of what is estimated.

(The Witness) You start back with 821 when the company was paying even on borrowed money something over 8%; I think it's pretty evident that with an 8% return at that time the company wouldn't have been able to function. In other words, if that condition had continued for a while the return would have to have been even higher.

Now in the meantime the company's securities have improved in value; rates at which the company can borrow money have come down, but they have come down it seems to me by reason of the fact that the earnings were as you related them to me, and then unless the earnings had been approximately as you have related them to me, it would be impossible for the company to have its securities sell on a plane at which they sell at the present time.

(Mr. Bryan) Do you answer yes or no?

(The Witness) He asked me to explain my opinion.

(Mr. Miles) It's as clear as the question.

(Mr. Markell) The answer is much clearer than the question. One other question, Mr. Hoyt.

(The Witness) If I may interrupt you there just a minute, Mr. Markell. I can't see in connection with that question, the second part of it, why on account of the fact that these securities do sell better, the reason for their selling at higher prices being due to satisfactory earnings, is any reason why the rate of return should now be reduced. I don't see where that follows.

(Mr. Bryan) Is that a legal opinion?

(The Witness) In my opinion.

(Mr. Bryan) Isn't that a legal question though?

(Mr. Markell) Financial question, I should say.

(The Witness) Practical question.

(Mr. Bryan) And also a legal question.

(The Witness) Well I don't know just what law is involved.

(Mr. Miles) At least you offer it as your best opinion you can give on that.

(The Witness) Right.

Q. If the rate of return were reduced then that financial condition would—— A. Of course it would be very much effected, obviously effected if the rates were reduced.

Q. And then after it was adversely effected the rates would have to be increased to restore that condition? A. Quite possible.

Q. And the only effect there would be there would be no stability in conditions? A. It seems so to me.

Q. Now just one other quetion. From your personal knowledge of conditions of all the kinds that have been discussed in your testimony as effecting rate of return, please state your opinion on this effection.

Assume that as recently as June 1923 it were determined by proper public authority what basis in the way

of relationship between the value of property and return on that property were a fair basis or rate of return on which to base the rates of this company, is there any reason why at this time a lower rate of return would now be a fair rate of return for this company? A. I don't think so. It is sometimes argued that bond prices are now very much higher than they were in 1923; that the cost of public financing on the part of these utilities in view of market conditions now obtaining can be done much more cheaply than financing could have been bone in 1923 we will say, and that therefore the public is entitled by reduced rates or what not to share in changes which have come about since that time.

In my opinion those changes are more apparent than real. While you see bonds today selling higher or at a lower yield than you did in 1923, I think it will be found in nearly every case that the credit of the obliger has greatly improved since 1923 and that the security is better than it was in 1923. And where there has been no change to speak of in the merit of the security and the margin protecting the security you won't find very much of a change at which the security sold.

I know I happened to be looking up a company here in Baltimore, and that was the United Railways and Electric Company, the first mortgage bonds of that company were selling at about where they were or perhaps a little lower than they were in 1923, I think, although the company is doing reasonably well, a little better each year, but there has been no startling improvement in that situation, no improvement such as we have had with the Electric Company, which has been more fortunately situated and therefore I don't follow this argument that there has been such a change in conditions that financing can be done so much more cheaply now, that therefore there should be some reduction in the rate of return necessary on the whole enterprise. In my opinion it would be still necessary to raise the capital, to enlist the capital to provide the enterprise, comparable in size and character with that of the Consolidated Gas & Electric Company to have a return and expectation of at least 8%, and then I don't see that there has been any change in conditions which would reduce what might be

termed a fair and reasonable return as between 1923 and 1926.

CROSS EXAMINATION.

By Mr. Miles:

Q. Mr. Hoyt, you testified before this Commission approximately a year ago, did you not? A. Yes, sir.

Q. In what case was that? A. The United Railways & Electric.

A. I didn't know whether it was that or the Telephone Case. What did you testify to then was the rate of return to which the United Railways & Electric Company was entitled? A. I said at that time that the return would have to be at least 8%; if you were to attempt to reproduce the property to attract the capital to reproduce it you would have a return of at least 8%.

Q. So that you think the rate of return which would be required by the United or by the company to reproduce that property is the same as would be the same to reproduce this particular property? A. You have got to have a return to enlist the capital necessary to create these utilities, you have got to have 8%, in my opinion.

Q. That's what I want to get at, Mr. Hoyt. Is it your contention that this Commission should adopt a flat yard stick or measure by which to determine rates of returns for all the major utility companies which are under its jurisdiction? A. That would better depend upon the evidence produced, if that's the necessary rate in order to attract the capital to permit these companies to properly function, then I should think the rate should be whatever the evidence is offered.

Q. Let me put my question another way, sir, because I don't think that's really responsive.

What are the factors which guide you in determining what in your judgment represents a fair rate of return for this company? A. It's my experience, general experience that would be necessary, what inducement would be necessary to enlist the capital.

Q. And that is the sole factor which you consider in determining what you think would represent an adequate rate of return? A I don't know whether it's the sole factor, it's the most important factor.

Q. What other factors do you consider? A. Well I would consider that there might be locations where you would have to have a higher return on account of difference and character of population, or not so favorably, situated, or franchise rights unsatisfactory, or things of that kind.

Q. Then isn't this true therefore that when you get ready to determine the fair rate of return for a utility company, you must treat each utility company on its own separate bottom, taking cognizance of the peculiar circumstances and conditions which surround each company and not attempt to prescribe an arbitrary rate for all public utility companies of the general size? A. Well then the better utilities I think, electric companies, major companies have a great many points of similarity, and I believe that a rate of return that would be fair in one city would probably be fair in another city where conditions were very similar. A great many companies I would say are very greatly associated in this major question of rate of return.

Q. I am not trying to spar with you or heckle you, but do you think then that the same rate of return should be fixed for the Consolidated Company, for the United Railways & Electric Company, and the Chesapeake & Potomac Telephone Company? A. You are asking me another thing. The same rate of return, you mean to say that a Commission in fixing rates of fare or what not should be guided—they must take into consideration what the traffic will bear, etc.

Q. Of course. A. But I would still say that you couldn't enlist the capital necessary to create the railways here, if there were no railways here, with an expectation of under 8%, and I would say the same thing about this company.

Q. How about the Telephone Company? A. I don't

know so much about the company, but in my opinion you would have to have 8% on the Telephone Company.

Q. Right. Now, Mr. Hoyt, I was very much interested in your testimony about the Conowingo project, and I as understand it in substance it is this: that the only reason the Conowingo can operate on 7% rate of return is because of their very favorable relations with the Philadelphia Electric Company and because the credit of the Philadelphia Electric Company is pledged? A. Yes.

Q. Well now doesn't that indicate therefore that you consider the peculiar conditions of each company when you get ready to fix the rate of return of that company? A. Well if you are going to ask me peculiar conditions, you might say what rate of return would be necessary for this company to make an issue of bonds

Q. I am coming to that. But I am asking you now whether that doesn't indicate that you yourself consider the particular circumstances of each company when you attempt to determine what should be a fair rate of return? A. Oh, no, I wasn't calculating a fair rate of return in the case of Conowingo, it's a rate that was necessary to be promised by the Philadelphia Electric, and whether it's fair enough or reasonable enough——

Q. But you know what rate of return has been fixed by the Pennsylvania Public Service Commission. A. In which case?

Q. In the Conowingo project? A. I understand there were several regulatory bodies involved in that decision, in the permits which they had to get.

Q. Do you know what the Pennsylvania Public Service Commission—— A. For the time being I understand they say 7% will be permitted.

Q. Now let's be frank with one another. Mr. Hoyt, wasn't the reason for the Pennsylvania Commission in fixing that 7% because of the relationship of that company with the Philadelphia Electric Company? A. Probably was.

Q. Yes, sir. And wasn't it because, as you have said, that it was due to the splendid credit condition of the Philadelphia Electric Company? A. Yes.

Q. Is the credit position of the Philadelphia Electric Company any stronger than the credit condition of the Consolidated? A. Perhaps a little bit, and the Philadephia Electric can't continue to function indefinitely. I didn't say that 7% would be a fair return on all of the property of the Philadelphia Electric. Sure 7% on this one part of its property may be enough to finance with, but that doesn't mean that that's a proper return on all of the Philadelphia Electric Company.

Q. Is the general credit position of the Philadelphia Electric Company any stronger than the general credit position of the Consolidated Gas Electric Light & Power Company? A. Somewhat, yes, in my opinion.

Q. Now why is it in your opinion somewhat stronger? A. It's a larger company and it hasn't as large a proportion of its capitalization represented by bonds and preferred stock.

Q. Do you know Mr. Hoyt where the majority of the securities of the Consolidated Company are dealt in? A. Where they are dealt in?

Q. Yes? A. I don't know positively. I presume they are dealt in here in Baltimore, but what happens is this: usually when a company, having good credit at home, desires to borrow a reasonably large amount of money, the securities are first sold outside, the local market will take a certain percent, but the local market will not take all the offering made by the company, and a majority of them are sold outside of the locality in which the company is located in the first instance. Gradually those securities tend to come back, because if the company is well regarded at home the people like home securities, and the securities gradually gravitate back to home market, but the home market is seldom sufficient to produce the necessary capital for these utilities which are growing rapidly. You have to go outside to attract the capital to do all of your financing.

Q. Now how well acquainted are you, Mr. Hoyt, with the general operating results of the Consolidated Company in the past few years? A. Only in a general way.

Q. Only in a general way. You don't profess to know then the particular circumstances under which this company operates, do you? A. I know what their last annual report showed, and I understood what the rate of return was on their property values for the last several years; I have known the increasing prosperity as indicated by the appreciation in their securities, but I don't know the details.

Q. Do you know what the Consolidated estimates its rate of return for the year 1926 assuming that their present rates are continued? A. I have understood that they estimated that they would make 7.7% next year.

Q. Which of course if under 8%, which you think is the minimum which the company should be permitted to earn? A. I think that under conditions such as we have at the present time it will be a very serious thing for the company if rates were so effected that under conditions such as we have at present that they could earn at least 8%.

Q. Why then do you think that the Consolidated is willing to earn 7.7 rather than 8? A. 7.7, perhaps a year afterwards they will make it up, it must be toward a standardized rate, one year a little below and next year a little above, but on the average I think it must average 8% when business conditions are reasonably favorable.

Q. Then you opinion is that the Consolidated is willing to do that because in the year 1917 and subsequent years its rate of return will be 8% or over? A. I think it would be willing to do that provided it was not hampered by a limitation that would prevent it from earning 8%.

Q. Now you said something about 8% being necessary for a new company, do you think that the same rate of return is necessary for a company with an established record as satisfactory as the record of the Consolidated

as for a new company? A. I don't see why not. I mean anything that isn't fair to the investment that is already here. If you are going to apply that investment to serving the public at a rate which would not be satisfactory for new investors to come in and provide the service.

Q. All right, then tell this Commission whether you think the investor takes as big a risk when he invests in the securities of a company with an established satisfactory earning record that this company has, as when he invests a like amount in a new concern? A. No, I don't think he does.

Q. He does not? A. No.

Q. Isn't the risk one of the things that's considered in fixing rate of return? A. Certainly, yes.

Q. Then why should the rate of return be the same for an old company as the new company? A. Because I don't think it's fair to penalize. I am assuming that new capital wouldn't come in and provide this service assuming you had been through your development and that your business had grown to the same stable condition that this is, wouddn't finance it unless it had an expectation of 8%. Now because the investor is already in, I say it isn't fair to him to compel him to take a lower rate than would be expected of new capital which was to develop the situation and had arrived at the same point of stability and history behind it.

Q. Then this is true; you think 8% would represent a fair rate of return for a new company and would be satisfactory to the investor investing his funds in the new company, and simply because of that fact you don't think the investor in the old company should be penalized? A. No, I say that 8% would be fair for the new investor providing the company had earned at the same state of development that this company had earned at. As a matter of fact it is questionable whether a new company such as you mentioned could be developed with an expectation of 8% only.

Q. I didn't mention the new company, you did, sir. I was just trying to get out of you what you had in mind. A. You asked me about that.

Q. That's correct. Now you made some comparisons with rates of return of utility companies and I think particularly power companies with industrial companies. Do you think that any such analysis is even relevant? A. Well, after all the utilities must compete in the market for funds.

Q. Do you think that the average industrial concern has the same assurance of reasonable return that the average utility company enjoys? A. It doesn't enjoy the same stability of business; the average industrial doesn't enjoy the same stability of business. I don't know about the average return taking good years with bad; the industrial makes 20 to 25 one year and perhaps nothing the next. Some industrial securities will sell at higher prices than the utilities and some lower.

Q. No question about that. And isn't it true that the average investor goes into the industrial proposition for speculative reasons? A. You mean in the Common stock.

Q. In most of its securities. A. You take United States Steel, 5% bonds will sell higher than the 5% bonds of this company, and the preferred stock will sell higher, too.

Q. Is that true of the average industrial, too? A. No.

Q. Of course not. What was the general level of interest rates on public utility bonds in 1922? A. I can't tell you that.

Q. Was it more or less than at present? A. I am not so sure there is much change. As I look over the average yield of ten very high grade railroad bonds from 1923 to the present time there has been very little change.

Q. Yes, sir, but as you look over ten bonds of the public utility companies do you find the same situation to be true. A. Find the public utility bonds are higher, but the companies are much stronger and much better protected now; bonds are better.

Q. Now assuming that the general level of interest or

the cost of money to public utility companies has declined since 1922, could not a public utility company with the same amount of security to offer acquire funds at a lower rate of interest today than it could have three or four years ago. A. That's possible if you assume that.

(Mr. Markell) A contradiction involved in that assumption.

Q. Now suppose the company has increased its security today as compared with 1922, wouldn't they have to pay less for money. A. If it increased its security?

Q. Yes sir. A. If its bonds are better and there is a lesser amount of bonds as compared to the property value outstanding, it could raise bond money a little better. I can't see that necessarily the company could function as a whole on any lower rate of interest.

Q. Now in 1923, as I understand it, Mr. Hoyt, this Commission fixed a rate of return to this company which I think it estimated not to exceed 8%. Do you think that that was a fair rate at that time? A. Not to exceed 8%; I think it should have said at least 8%.

Q. At least and to exceed. Just what is the distinguishment you are making there? A. Well, I mean to say if a Commission had said its fixing rate now which on the average would produce 8% on the property value, assuming normal operating conditions, I would say that that was a fair rate.

Q. I think the Commission's opinion said "Not less than 7 or more than 8." You don't think, then, that that was a fair rate? A. I hardly think that was a reasonable rate, under the circumstances.

Q. And you think in order for it to have been a reasonable rate under the circumstances the Commission should have used a phraseology, "An average rate of return of 8%." A. I rather think so.

Q. Over what period of time do you think that that average rate of return should be permitted to continue? A. I can't exactly say, but it seems to me that the rate —one of the great difficulties of these public utilities are

shifting rates it seems to me, and if a company is permitted to put in effect rates and it produces between 8 and 9 per cent on its property value over a period of public interest to disturb those rates.

Q. Even though the average is over 8% for a period of years you see no reason? A. Yes.

Q. Now suppose the average goes up between 9 and 10 percent? A. And it's there for two or three years, then I should say it's time for the Commission to step in, but as a matter of fact the electric light management doesn't take 9 or 10 per cent. They put into effect themselves reduced rates.

Q. Then as I understand it you think that in order for their rates to be reduced they should earn more than 9% for two or three years? A. I don't think that a rate in the neighborhood of 9% is an unreasonable rate considering that in a year of great prosperity they make that in view of the fact that it often runs below that any may run below that for several years.

Q. Now assuming that the rates which the Company want to continue in effect would permit them to earn on the average of 9% for four years, would you think that their rates should be disturbed any? A. I wouldn't think so. I think the company itself probably would.

Q. But if the company wouldn't do it, you don't think that the Commission should? A. I hardly think that is an extraordinary, exorbitant earning.

Q. Your position then is this: that if the Company earns 9% for three or four years, averages 9%, and don't want to reduce its rate, it shouldn't be required to, but at the same time you think the company ought to reduce its rates as a question of managerial policy? A. A company, in order to consolidate its position in the locality in which its located, would probably voluntarily reduce rates, but I wouldn't say that 9%, consider the hazards, is an exorbitant rate and is particularly unfair or unfavorable to the public.

Q. Now if it gets up to 9.1%? A. Some reasonable amount above 8%. I should say that sometime in there,

the Commission might, if it feels that it's unfair to the public, step in and ask them to reduce the rates. I don't know just where the point is.

Q. Neither do I, but I want the Commission to find out and I want to find out. We are up to 9%? A. Perhaps four years is too long, but take two years, if that rate is coincidental with a very low rate for the service, and very high grade service, it doesn't seem to me that a company should be penalized, because one year or two it makes 9%.

Q. All right, now we are back from four years to a year or two? A. I don't know what the year is.

Q. You don't know what the year is? A. No.

Q. Let's get together somewhere here. I want to know how long you think the company should be permitted to earn a 9% rate of return before the Commission would disturb it? A. I wouldn't answer that question. That's up to the Commission to decide personally. I don't think it would be unfair to the public, under certain circumstances, to let a company for two years earn 9% on its property value.

Q. Two years, but if it went over 9% A. I don't know, I am not prepared to talk as a Commission and just say whether it's 9.2 or 9.3, then that Commission should hold the company here and say reduce your rates; I can't do that.

Q. I understand that, sir, and I am not trying to spar with you a bit, and you are being very frank, but I don't think you should tell me that that's a matter for the Commission to fix. I talk about 9% and you say 8%. It's just—— A. All I can tell you is what I think is the rate of return necessary to enlist the necessary capital. Now, when you get in the question of protecting the public, etc., that isn't my function; I can only give you my impression on that.

Q. Were you familiar with the financial condition of the Consolidated Company in 1922 and '23? A. In a general way.

Q. If there has been a very marked improvement in the Consolidated Company since 1923 should that improvement be considered at all by the Commission in your judgment in fixing the rate of return? A. Yes.

Q. You think that should be? A. Yes.

Q. So that if in 1922 and '23 an 8% rate of return was enjoyed by this company and since that time their financial condition and their general credit position is stronger today, you think the Commission would be taking unwarranted action in lowering that rate of return? A. Yes, because they fixed a rate of return in 1923 that permitted the company to reach this strong financial condition which enables it to function properly now. If they hadn't done it the company wouldn't be able to do so, in my opinion.

Q. I understand, but if their position is improved, and is very much stronger now, ought they be permitted to continue to earn that rate of return? A. Why, certainly.

Q. Mr. Hoyt, if a rate of return of 6.75% or 7% or anything less than 8% would permit this company to pay all of its operating expenses, pay its dividends on common stock at 10%, meet all of its interest on its bonded debt and put a million dollars a year in its surplus account, do you think that if a 7% rate of return will permit those things to be done, and if the Commission fixed this Company's rates at a point where it would earn only 7%, that that fact would effect the ability of this company to attract capital? A. I don't think that would be necessarily fair to the investment in the property. You talk of 7%, of certain dividends on its stock; now what is the value of its stock. If it has a very large surplus and a very small capital stock why that doesn't necessarily protect the investment in the company.

Q. I don't believe you understand my question. A. Anyway, I don't think the company could continue to function under the conditions you mentioned anyway indefinitely.

Q. All right. If this Commission prescribed a 7%

rate of return for this company, and that rate of return would permit this company to earn a sufficient amount of money to meet all its operating expenses, pay 10% dividends on common stock, meet its funded debt promptly of course and put aside a million dollars a year to surplus, do you think that action of this Commission would effect the ability of the company to attract capital? A. Yes, I do.

Q. In which way? A. Well, I don't think they would be able to continue to sell that stock at a fair price under such conditions.

Q. Even though all of those factors were there? A. Yes, at a fair price and reasonable price.

Q. Mr. Hoyt, I just have one more question and I am through, and I don't want to continue to repeat or propound the same question to you, but at the same time I do want to get an answer sufficiently clear so that when the argument in this case takes place I can't be accused of misquoting you. Now with that statement and that is the only purpose of my question.

I want to know whether in making up your mind preceding your testimony as to what you think is the minimum rate of return that this company should be permitted to enjoy, what factors you consider, and also whether you think or don't think this Commission should treat the operating results and credit position and financial conditions of each company on its own separate bottom when it fixes the rate of return for each one of those companies. A. I think that the Commission should take into consideration the character of the industry, its competition for capital with other industries, and that the financial structure of this company and its financial returns should be given but slight weight by the Commission. I think the Commission should say here is a public utility property devoted to the public interest, it has to compete for capital with other industries having different risks, and that what rate of return should accompany an industry under the conditions of this kind be permitted to earn in order to compete successfully with other companies in other lines of business or in similar lines of business. It seems to me

that's the only fair one to take, what is a reasonable return on the fair value of a public utility property devoted to the public service.

Q. Do you think that this Commission should primarily consider what other electric industries enjoy, and then secondarily to consider the peculiar conditions of this electric company; now is that correct or not? A. I should think that the Commission should consider what rate of return is necessary to protect and promote the electric industry in general, and how far does this particular company vary from the rate of return that would be necessary to enlist the capital for electrical companies.

Q. I am with you on that.

(Commissioner Harper) Mr. Hoyt, in the case of the Philadelphia Electric Company to which you referred in the early part of your testimony, what is the percentage of its bonds to the total amount of the bonds and stock?

(The Witness) The Philadelphia Electric, I can't answer that positively off hand, but I don't think its funded debt exceeds about 40% of its total assets.

CROSS EXAMINATION

(Continued).

By Mr. Tingley:

Q. Just one question, Mr. Hoyt, which may prove to have as many convolutions as some of the others that have been propounded, but in the case of a utility established some years prior to the establishment of State regulations, enjoying a monopoly in a municipality, does the rate of return that would be required to attract capital to a new business have any practical relation to its credit position? A. I don't understand the preliminary question there in a monopoly with no regulation.

Q. No, in a monopoly with regulation and an established business? A. Certainly, the fact of the established business and the fact that regulation is a protection as well as a limitation it's not protection against competi-

tion, probably protection in many ways, protection on the issuance of securities, etc., it enables the public utilities to finance more cheaply than they could otherwise.

Q. What I want to get at specifically is this; in the case of a company which is actually operating as a going concern and has an established business and has built up a surplus, and has a substantial dividend record, is the cost of attracting capital to a new business any factor at all in determining the credit position of this established business? A. Well, I think that you must give consideration to what rate of return would be necessary to attract capital and build up a situation to the point that the existing situation enjoys.

Q. But as a practical matter, does the rate of return that would be necessary to attract capital to a new enterprise have any actual bearing upon the credit position of the established company; I mean does it effect its borrowing capacity or is it considered in determining its credit position? A. It must be considered it seems to me in trying to find what is fair, what is reasonable. It must be considered. It's been considered by the Courts and by Commissions.

Q. Is that as important a factor in determining fair rate of return as the actual rate involved in a particular enterprise whose rate is being determined; I mean what is the more important factor? A. Well of course a company—the difficulty is that that company under an unreasonable rate of return, unreasonably low rate of return could function for quite a while before its credit would be entirely exhausted; it could keep on issuing bonds up to a certain extent, could issue some stock perhaps at a very low price, but the time would come when it could not any longer sustain a sound financial structure, it couldn't issue enough stock to keep its margin beyond or to keep the margin beyond the bond which would enable the company to raise money through bonds at a reasonable rate.

Q. As between these two factors, what do you think is more important in determining the rate of return to be applied a particular enterprise, that is a going concern

with an established business, one the rate which would be required to attract capital to a new enterprise, or to the actual financial position of the established enterprise, and the risk represented by that enterprise by investment in that enterprise. A. In my opinion there wouldn't be very much difference probably if you follow one out to a logical conclusion than the other.

Q. Which do you think an investor contemplating investing bonds in the established enterprise would consider important? A. How do you mean?

Q. Would he be more influenced by the credit position of the established company or by some hypothetical like the rate of return required to attracting capital to a new enterprise? A. It seems to me the only way you can determine what is a reasonable rate of return, assume the company was in a position to sell all of its property to a new class of investor. Now those new investors, buying the whole property, what rate of return would they expect to enlist their money in the enterprise, than you get at what is fair.

Q. I understand the argumentative answer, but what I want to get is a specific answer to the question; what factor would the investor be more influenced by? A. The investor doesn't buy the whole property ordinarily.

Q. He buys an interest in it, doesn't he? A. He buys the stock and the bonds or the preferred stock and the bonds and common stock, and he is effected by a great many considerations; what the company has done, what it will do, what the prospects are.

Q. Is he effected to any extent by such a hypothetical condition as the rate of return which would be required to attract capital to a new enterprise? A. You mean the man buying common stock or bonds?

Q. Yes, either one. A. He might not stop to consider it if he went into the situation the way these insurance companies do. They probably would give that question considerable weight, because the Courts have mentioned it.

(Mr. Miles) Just elaborate a little but on Mr. Ting-

ley's last question, see if we can't get a direct answer. You mean to tell this Commission that if one of the salesmen of the National City Company went in the office of one of their clients, their prospects, and offered to sell him bonds in the Consolidated Company or any other electrical industry that that salesman is very careful to point out to this investor what this company would have to earn, or whether it was earning enough to justify the attracting of capital to a new industry, or doesn't he confine his remarks to the operating results of the company of whose particular bonds he is selling?

(The Witness) He does in a way, and yet it is true that under certain situations, where a regulatory body has been very narrow in its point of view, it has effected the sale price of the securities under the jurisdiction of that regulatory body.

In New York we have had unfair legislation passed by the legislature there, and the fact that there has been interfering influences tending to prevent certain public utilities from getting a reasonable return on the fair value of their properties has been a factor in deciding at what future securities will sell.

(Mr. Miles) Now do you think if I called up Mr. Belknap and asked him if he would recommend an investment in certain bonds of this company, explaining the reasons for that, Mr. Belknap would enter into a discussion with me whether this company is earning enough to attract capital in a new venture.

(The Witness) No, but just the same the market price would finally arrive at a point where that should be taken into consideration.

CROSS EXAMINATION

(Continued).

Mr. Bryan:

Q. Mr. Hoyt, thus far in your testimony you haven't made any reference to the relationship existing between the earnings of a utility and its fixed charges and its dividends and elements of that kind. Let's take first the

comparison between the net earnings and the fixed charges. How many times does the average utility company of good credit earn its fixed charges? A. Two and a half to three times.

Q. Isn't anything over twice considered pretty good risk from an investment standpoint? A. I think it would have to be, generally speaking, substantially over twice.

Q. Your company does sell and recommend bonds where the fixed charges are earned not more than twice? A. Yes, at a price.

Q. How would the price—— A. They would probably be 6% bonds.

Q. On the basis of a 6% return. Now take the case of preferred stock, how many times the preferred stock dividends should the earning available for preferred stock be earned? A. You can't answer that categorically. The best way to figure the investment rating to which the preferred stock is entitled is to take your fixed charges and your preferred dividends and relate those two against the net earnings.

Q. How would you fix the proportions that ought to exist between the net earnings and the sum of the preferred stock dividend and fixed charges? A. Well, the net earnings ought to show—well if you are going to have a high grade preferred stock it would have to show pretty well up to twice the fixed charge and dividends, but anyway over once and a half.

Q. Over once and a half the sum of the preferred stock dividends and the fixed charges.

Now come down to the common stock, what is regarded as a fair margin of safety in the comparison between what is available for the common stock dividends, and what is actually paid on the common stock? A. You see our better public utilities have enjoyed the highest credit and very few of them show preferred stock outstanding, not very few of them, but I mean those around New York have much preferred stock outstanding, as a matter of fact the margin available for dividends on the

common stock runs 50% and in some cases a higher percentage of the total net earnings.

Q. Do you mean then if the common stock is earned once and a half times—— A. No. I don't mean that. I mean for a company to enjoy the highest credit the dividends and preferred stocks should not take up more than about 50% of the net earnings.

Q. You mean the sum of the fixed charges and dividends ought not to be more than 50% of the net earnings? A. Yes.

Q. How many companies are there that enjoy that favorable position? A. I think the Philadelphia Electric Company would, I think the Commonwealth Edison of Chicago would, I think the Brooklyn Edison Company would, I think the Consolidated Gas Company would, I think the New York Edison Company would.

Q. Are those about the only ones that you can think of as in that category? A. No, but you start out with a type, and I am giving you those that enjoy the highest credit, and then it will grade all the way down.

Q. So that your specifications given here this morning as to what the rate of return ought to be are really based on what is necessary in order to bring this company into the same class from the standpoint of credit showing as the ones you have just recently mentioned, is that right? A. Not necessarily, but I say the rate of return must be necessary to provide an income which will enable this company to enjoy that credit.

Q. That isn't quite the answer to my question, but I will ask you again. Is it or not a fact that your testimony this morning as to what this company should enjoy as a rate of return is based on what you consider is necessary to bring this company into the same classs with the half a dozen or so that you have just mentioned? A. I don't, exactly about the same class, but to give it good credit I am assuming a company has a sound financial structure, whatever that may be, as a sound financial structure, and then it must have a rate of return that will enable it to continue to finance assuming it has a sound financial structure.

Q. Referring back to my last preceding question, instead of the expression "bring this company into the same class with the others," I should substitute the expression "to give this company as good credit as the other." A. I woudn't pin myself to say "as good credit," but to enjoy good credit. I don't know just where the point would be.

Q. I would still like to get your answer to that question, Mr. Hoyt. Was your testimony based on the assumption that the rate of return that this Commission should allow would be sufficient to raise this company's credit to the same level as that of these other companies? A. In considering my testimony I didn't think of relating the rate of return which I believe to be necessary for this company as being necessary to bring its credit up to the point of these other companies. However, I don't see that it makes a great deal of difference because where you find a stock representing a very considerable portion of the investment or capital structure, you will find that a stock earning we will say 11, 12 or 13 dollars a share will sell at quite a premium, but on the other hand where your common stock gets down to the point where it represents we will say only 25% of the financial structure, in order for that stock to sell par in good years and bad, and in order to attract additional capital, instead of showing only ten dollars a share it will have to be twelve or thirteen or fourteen or fifteen. You can see as the Common stock is small as compared to the total financial structure the risk is greater and I think must be so.

Q. I still would like to know whether your testimony this morning has been based on the situation of these other companies? A. No.

Q. And what you believe to be the return that ought to be allowed this company as compared with the other companies? A. No.

Q. You didn't have the other companies in mind at all? A. No, I don't think that was a compelling feature.

Q. You consider the Detroit Edison Company to be a

strong company? A. Yes. I consider this company to be a strong company.

Q. Do you think the Detroit Edison Company compares in all particulars with the one we have here in Baltimore? A. In many respects, I think.

Q. Do you happen to know whether the surplus for the year 1925 of the Detroit Edison Company was greater or less that the surplus of that year for this company? A. No.

Q. Do you happen to know how the surplus for 1925 of the Detroit Edison Company compares with the fixed capital of that company? A. No.

Q. Now I notice in your circulars offering securities for sale, I am referring now particularly to bonds, it is frequently stated that a 5% bond is offered at a price which will yield say 5½ or 5¼ or 5¾ or 6. What is the explanation of that difference between the nominal yield of 5%, which is the one that characterizes the bond so far as its permanent qualities are concerned, and the so called effective yield which may be higher? A. You mean on account of the fact that a bond is sold at that discount.

Q. That is the explanation, is it? So that in considering the return on the bond, the investor, if he wants to be accurate, will add to the effective interest paid a proportionate part of the bond discount to maturity, is that correct? A. That's one way of expressing it. The bond yield is really the present worth of all of the subsequent payments, all coupons and the principal.

Q. And you take into consideration the discount or the excess of what the holder will receive at the maturity of the bonds over what he pays for it now? A. That's right.

Q. So that assuming the bonds were issued at a discount, the cost to the company will likewise be somewhat more will it not than the nominal return? A. Yes.

Q. And the cost to the company will be mathematically the same as the return to the investor? A. It would.

The companies seldom keep their books that way; they sometimes write off the discount in one year or any year, or else they might for a certain percentage of the discount and write it off in order to get it on an accumulative basis, like one twentieth of the discount.

Q. They would have to take the summation over a period of years? A. That's right, that's the real cost of the effective money.

RE-DIRECT EXAMINATION.

By Mr. Markell:

Q. Mr. Hoyt, in line with several questions asked you by Mr. Miles and Mr. Bryan, I will ask you to assume that in 1921, as has already been suggested, this company had a financial structure consisting of 7.7% bonds, and the balance common stock, that in that year the company had paid 8.3 for the actual borrowed money, and in the middle of that year this company asked and received from this Commission a substantial increase in rates; that the Commission two years later, in 1923, reduced rates, but determined what would be a fair return for this company; that after that rate increase in 1921, both before and since the rate case of 1923, this company has pursued a conservative dividend policy and has accumulated surplus and has very greatly improved its financial structure by issuing an increased proportion of preferred and common stocks as have already been outlined to you in previous questions, and as a result of all of those circumstances the company's credit has been greatly improved since 1921.

I will ask you to assume that in the same year 1921 there had been another company identically like this company in all respects as to rates, earnings and cost of money, and they had the same experiences and got the same rate increase, and had the same determination by the Commission in 1923 of what would be a fair rate of return, but that unlike this company, this other company which we will call Company B, pursued a reckless financial policy, distributed as much as they possibly could in dividends, borrowed money up to the very limit, and had not improved their financial ratio of stock

and bonds, so that at the present time Company B had a very poor credit and a credit much inferior to ours and had to pay a great deal more for borrowed money.

Will you tell the Commission, whether or not in your opinion, there would be any reason why this company should have its fair rate of return cut because of the good use that it made of a fair rate of return and should be allowed less rate of return than the Company B under those circumstances? A. I can see no reason why this company's rates should be cut, and on the other hand I can see no reason why the Commission should increase the rate in favor of Company B because it had been improvident in handling its finances.

Q. So that if a rate of return is fixed which is fair for the company under all circumstances surrounding the rate of the company, you think that the company itself is entitled to the benefits and entitled to suffer the benefits of good use and the damages of the bad use that it makes of its fair return? A. It would seem so to me. It would seem to me that it would only be fair for the Commission to assume, in allowing a reasonable rate of return, that the company's property is well managed and that its financing is prudently handled.

Q. Now you have had certain hypothesis put to you of this particular company. I don't know whether you know it is a fact, but I will ask you, do you know it is a fact that for several years before 1921, which was a condition not only of this company, but a great majority of utilities in this country, that they were receiving inadequate returns? A. I am sure it was true in the case of a very large number.

Q. Do you know that in the last few years, right up to the present year, there have been very many cases all over the country where the Courts have given utilities relief against inadequate rates imposed by law? A. I know there have been a great many such cases.

Q. And do you not know that in many cases besides this case of this company in 1921 the regulatory bodies, such as the Utility Commissions, have recognized that companies had been receiving inadequate rates and in-

creased their rates, so as to yield a larger return? A. I know that is true, yes.

Q. Assuming therefore that a utility Commission in the neighborhood of 1921 had recognized that a company had been receiving an inadequate rate of return, and had readjusted rates so as to allow the company to get a better return, will you state whether or not the natural result of such action on the part of the Utility Commission would be to improve and to expect to improve the credit of the company? A. That would be the natural result, yes.

Q. Assuming therefore that a Utility Commission had recognized the return to be inadequate, and had raised rates so as to give an adequate return, will you tell the Commission whether, after the company has got the improved credit condition, which is the natural result of getting a fair rate of return, the Commission should thereafter give it any less than a fair rate of return to detract from that condition? A. I don't see why the company should be penalized because its securities have improved in market value and its credit has increased by reason of the fact that it has for a number of years received rates which permitted it to earn a reasonable rate on the fair value of its property.

Q. Now let me turn to another asset what was discussed in cross examination. The testimony in this case indicates that this company expects to get a return of only 7.7% during 1926, having received a return of I think 8.6 in the year 1925.

Will you tell the Commission whether or not the expectation of this company under those circumstances that it will only get 7.7% would have the same financial effect as an order by this Commission that the company should in no effect get more than 7.7%? A. The effect of the order of the Commission would be much more serious of course if the Commission should say that under no conditions shall this company be permitted to earn more than 7.7% or whatever the figure is. That would be very different from the effect of the company putting into effect voluntarily rates which would pro-

duce only 7.7%, because the company is not waiving any rights by so doing.

Q. If the Commission says that the company shall not be allowed at any time to earn more than 7.7%, is there any guarantee involved in that that they are going to get 7.7? A. No guarantee. It's quite possible they would get less.

Q. But they couldn't get more? A. But they couldn't get more.

Q. Now one other aspect, you have been asked about the difference between the new company and an established company. I am coming back to that, but before taking that up I will ask you to consider this company as it is today and assume that instead of buying and selling relatively a few stocks and bonds even though they amount to a million in a particular year, it were proposed to form some new enterprise to take over the entire property of this company and buy it, and suppose that at the present time to use round figures, the Commission has determined the fair value of this company's property, including additions to date, to be one hundred million dollars, what in your opinion would be the lowest rate of return that this property in the case of the new purchaser would be permitted by the Commission to earn on it and which would be sufficient to attract the one hundred million dollars capital to buy that property? A. I should doubt whether you would be able to sell the property or enlist enough capital, one hundred millions of capital to buy the property if the ruling of the Commission were such that even under agreeable operating conditions the company could not earn as much as eight million dollars. I think you would have that much permitted in order to attract the capital to finance the purchase.

Q. At least eight million? A. At least eight million.

Q. Now one other aspect. You have testified to certain hypothesis or rather as to facts as to the need of at least a possibility of earning 8% to interest investors either in buying an existing property or constructing a new one.

Now in either event, even in the case of this company, suppose that investors were to buy this company and proposed to buy it at one hundred million dollars. Or suppose that investors were going to construct the Conowingo property for fifty million, and that we were divorced from the Philadelphia Electric Company; that we had no credit of the Philadelphia Electric Company.

Now suppose in either case that when that purchase is made, either in the existing property or in construction of the new property, that it is understood that the Commission will not allow the purchasers to get more than 8% on the value of the property that they are buying.

Now in that case the maximum that investors could get would be what per cent.? A. The 8%.

Q. And would they have any guarantee that they would get the 8%. A. As a practical matter it might of course be less.

Q. So they take the risk of getting less in the hope of getting 8? A. That's right.

Q. And if you take just one isolated case, if you look at the field and the country as a whole, the situation that would exist would be that in any one company over a period of years, or in a number of companies in a given year, all subject to a maximum of 8%, the average actually received by the investors would be what? Somewhere between zero and 8%, would it not? A. Yes.

Q. So that the mere hope of getting 8% would be a factor which, in the investor's mind, would offset the risk of getting only 2 or 3 or 4 or nothing at all? A. It would if he enlisted his money under such circumstances.

Q. And in your judgment that hope of at least 8% would be necessary to break the counterveiling risks? A. I think so.

Q. Now carrying that one point further and making this assumption; if investors put their money in either now of existing properties with the hope of no assurance of getting a return of 8%, and the risk of getting

nothing at all in the long run, of course a number of those concerns would lose, wouldn't they? A. Some concerns will get much less than 8% of course.

Q. Do you know whether or not there are a substantial number of utilities in this country that, apart from governmental regulation, are able to earn less than 8% return. A. You mean street railway companies?

Q. I mean street railway companies? A. Yes.

Q. There are some gas companies, aren't there? A. I think so.

Q. If that is the situation, that some may lose and some will have a chance to earn a return, if as soon as the fortunate companies establish their 8%, the fact that they are getting it is a reason for cutting it down to seven—— A. It would greatly limit the attractiveness of public utility investment.

Q. If that distinction that's been suggested would be made between established companies and new companies, if as soon as a company has reached a point where its credit is established, if then it were an established rule that the man who is already in the investment is not to get the fruits of the stability, but is to have his return cut from 8 to 7, wouldn't the real effect be that the thing held out was not 8 but only 7? A. It would, and of course it would greatly depreciate the attractiveness of public utility investments if that were the policy.

RE-CROSS EXAMINATION.

By Mr. Bryan:

Q. Mr. Hoyt, Mr. Markell recalled your attention to the fact that a number of utilities were not making very much money in 1920 and '21; you could carry that back to '18 and '19, couldn't you? A. Yes.

Q. That was principally on account of the increase in expenses brought about by the war? A. Yes.

Q. And the utilities as a whole made a general application to the Commissions for higher rates? A. I think that's true.

Q. In every case they got them. A. I don't know in every case; where they had a good case.

Q. Where they deserved them they got them? A. I think so.

Q. And when the Commission didn't give it to them, they applied to the Courts and they got it anyway? A. You are referring to the Gas & Electric Companies. A good many of the traction companies weren't able to get them.

Q. Do you happen to know in any such cases where such increased rates were given in order to bridge over the emergency created by the war, those rates were given despite the fact that those increases involved a departure from contracts previously made with utilities with certain classes of their customers? A. In some cases I know that's true.

Q. As a matter of history in this case, that's what happened in 1918 here except that the company did not have to apply to this Commission and then to get the increase which it made in its power rates to the deregation of all of its existing power contracts, andd that happened in other places? A. In some places, yes.

Q. An ordinary business concern coukln't do that? A. Probably not.

Q. Wouldn't have the legal right to change anyway? A. Probably not.

Q. So that's one factor that would tend to account why the investor is willing to accept that 8% in utilities, whereas he doesn't care so much for the 30 or 40% in industrials? A. It's a peculiar character in public utilities that in the public interest they can do certain things.

Q. Isn't that a desirability from the investor's standpoint? A. Yes.

Q. When you say that all the investor gets when he puts his money in utility securities is the hope of so much, whatever that return is that he expects, of course that's true legally, but actually in a city like Baltimore

is it not true that if the Commission sees fit to allow the Investor to earn so much as he has in mind, or is earning at the time he buys his security, that actually he is going to get that much so long as the rates stay in effect? A. I don't know exactly what you mean; that he is going to get the present rate of dividend?

Q. What I am getting at is, is not the permission of this Commission in Baltimore City and similar cities of like condition to earn a certain amount almost equivalent to a guarantee of that amount, not legally, but actually? A. No, I wouldn't say so.

Q. Couldn't this company earn 10% if the Commission allowed it to? A. I don't know whether the traffic would bear that amount or not, but then it wouldn't be guaranteed anyway. Just as you say, when you get back to 1920 and '21, they couldn't get their rates up promptly and many companies had to suspend their dividends and cut off dividends, so it wasn't guaranteed.

Q. That wasn't generally true, was it? A. What wasn't true.

Q. I don't mean the small isolated companies? A. Pretty big ones, People's Gas of Chicago, Union Gas of Brooklyn, a lot of them had to cut off their dividends entirely. There wasn't any guarantees.

Q. There wasn't any Utility Commission in New York to give them prompt relief was there? A. Yes, and the legislature perhaps passed a law to prevent it, but it takes time for the Commissions to act.

Q. What is your idea of the lag that usually takes place between this increased requirement and increased rates? A. A couple of years.

Q. It happens in this case, in 1921, this company made application for an emergency gas rate, and within two months after the petition had been filed they got it.

(Mr. Markell) We had been short for four years though.

(Mr. Wagner) Within the year.

(The Witness) I don't think there is anything that amounts to even a practical guarantee of rates here.

Q. So when you speak of this long lag which sometimes creates an emergency which can't be immediately relieved, the length of that lag depends very largely on the conditions existing in the locality in which it takes place? A. It may be true. In street railways you have a condition where traffic won't bear enough to permit you.

Q. So that if this particular Commission has always acted promptly on such emergency applications, then that feature that you refer to in discussing the lag isn't so important in this jurisdiction, is it? A. No, not if you can always call on the Commission for prompt action, it isn't as important. Then your hazard is more like the industrial hazard.

Q. Now finally is not the investor concerned not so much with the mathematical return and the theoretical value of the utility property, but on the amount of net earnings which the utility is going to have in relation to its requirements for expenses, fixed charges, dividends and surplus; what he looks at is the earnings of the company, isn't it first of all? A. Of course if he is a very large investor, we will say he is going to buy a very substantial interest in this company or in some company, a very substantial interest, he investigates a great deal more than just what are the earnings. A fellow buying one hundred shares, he looks at the earnings, yes.

Q. But certainly the earnings are one of the things he looks at? A. Sure.

Q. And he will make his comparison between the company's requirements and the surplus after that is taken out? A. Surely, and that has a very material bearing.

Q. Therefore in the case of this company, if this Commission should rule in this case that they were going to allow this company enough of a net income to pay its fixed charges, all its dividends, of course I am assuming that the depreciation has been taken out before

you come to fixed charge or dividends, I don't know whether you have assumed that in your testimony, have you or not? A. No I did not.

Q. So therefore when you say that the net earnings should be not less than two and a half times fixed charges, you mean net earnings before depreciation was taken out, did you not? A. No, no. The earnings should be sufficient to produce a return of 8% on the fair value of the property, and then in calculating that 8%, I am figuring that that's the net return after all taxes, expenses of maintenance and whatever may be necessary to reserve for future replacements, etc.

Q. I was asking you about the other comparison you made a while ago when you said that the net earnings ought to be at least two and a half times the fixed charges. Now when that comparison is used in investment circulars, does it mean the net earnings before taking out the provision or charge for depreciation and retirements, or does it mean net earnings after such has been taken out? A. The practices are not uniform. I am afraid in many cases we show the net earnings before depreciation, in other cases we show them after. There is no uniformity in that.

Q. Which one did you have in mind when you spoke of the net earnings being not less than two and a half times the fixed charges? A. A figure after making some allowance included in operating expenses for future retirement.

Q. Is that an afterthought or is that what you really had in mind when you said that? A. I think now of the companies that I have in mind that do that.

Q. But a great many don't? A. A great many don't, that's true. There is no uniformity.

Q. A great many consider, as you said very properly, they regard the net earnings after what is left, after operating expenses are paid and before what is taken out for depreciation? A. Yes.

Q. That money isn't spent, is it? A. No, it's reserved, but it wouldn't make so much difference because the

company might twice after depreciation and another three times before depreciation and they would average out.

Q. But a great many companies would not show over twice after depreciation was taken out? A. That's right.

Q. Assume that this Commission in its right should lay down on which the rate was based in this case that the purpose was to allow the company net earnings sufficient to pay all the fixed charges, to pay all the dividends preferred and common, to make ample allowance for depreciation and other appropriations to reserve, and still to leave the company a substantial surplus from the year's operation, and by substantial, we will say from a million to a million and a half dollars a year after everything is paid, and suppose the Commission, in explaining that rate, said that they also took into consideration the fact that that return was not less than 7 or more than 8%, which is the language practically they used in the 1923 case, would you consider that that rate would tend to injure the company's credits in the sale of its securities in the future? A. It might very well. I don't know whether the dividend paid in cash is a reasonable dividend.

Q. I am talking about equivalent to 10% on the Common Stock? A. That isn't 10% on the capital surplus.

(Mr. Markell) It isn't 10% on the Common Stock. The stock when last issued was $35.00.

(The Chairman) Of course it is not 10% on the Common Stock. The mind of the Commission isn't confused on that issue at all.

Q. 10% on the original Common? A. Oh well, the original Common Stock don't mean nothing.

Q. It does mean something in this case, because what happened was that just about a year ago this company issued four shares of no par stock for each share of its then existing Common Stock with a par value of $100.00. A. Yes, I understand, but what was holder's interest in the building, in the business.

Q. I am talking about the par value, Mr. Hoyt? A.

That means nothing in my opinion; stock is worth more than par or less than par. It's never par.

Q. In your opinion would a rate fixed on that basis injure the credit of this company? A. If the earnings per share, I don't care what the dividends were, if the earnings per share were reasonably satisfactory, a reasonable rate, the earnings per share were a reasonable rate on the value of the stock and then you add your surplus in addition, why possibly that's all the company would need, but you have to get the earnings per share of course.

(Mr. Markell) Mr. Hoyt, what effect would it have on the sale of bonds, if you were to state in the prospectus, or your bond salesmen were to say to you here is a 5% bond offered you at par, and this company has earned this amount of money, and is earning this amount of money at rates fixed as fair and a fair rate of return, but because you are willing to pay the price we ask for this bond, the Commission is going to cut the rate of return because we don't need those earnings any more. A. It would raise a question in the prospective bond buyer's mind, why did the company earn this much last year, why is it going to earn so much less next year.

(Mr. Bryan) Has that statement ever been made in a prospectus that way.

(The Witness) Not in that way, but we have to take it into consideration.

(Examination concluded.)

NOTE: The Commission then adjourned for the purpose of taking a Recess.

(B)

TESTIMONY OF ALLEN G. HOYT AND T. S. BURROUGHS IN THE RAILWAYS VALUATION CASE NO. 533—10TH DAY, MAY, 27, 1925.

AFTER RECESS.

Thereupon—

ALLEN G. HOYT,

a witness of lawful age, produced on behalf of the United Railways & Electric Company, having first been duly sworn according to law, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Baetjer:

Q. What is your occupation, Mr. Hoyt? A. I am Vice-President of the National City Company in charge of public utility financing.

Q. The National City Company is engaged in what business? A. In distributing securities, bonds, preferred stocks and notes, etc.

Q. You mean buying and selling? A. Buying and selling.

(Mr. Miles) I am willing to concede the witness' qualifications.

Q. And how long have you been with the National City Company? A. Since 1916.

Q. And prior to that time what was your occupation? A. I was a partner in N. W. Halsey & Co., investment bankers who specialized in public utility financing.

Q. The National City Company is of course one of the largest distributors of the purchasing and selling organizations in the country, is it not? A. It is.

Q. You say you have charge of the public utilities? A. Yes.

Q. That includes, of course, power companies, gas companies, electric companies, street railways, steam railways? A. It does. Steam railroads give a different classification, we don't call that public utility, although it is.

Q. When you use the term "'Public Utilities," you mean power companies, electric companies, gas companies, street railway companies. A. And telephone companies and water companies.

Q. When you say you deal in securities you do not mean merely dealing with securities listed on the stock exchange after they are issued? A. No, sir, we are rather merchants in securities, we buy at wholesale and then we sell at retail.

Q. That is you are a house of issue? A. We are a house of issue.

Q. Buy the entire issue from a company and then distribute or sell them? A. We do sir, yes sir.

Q. Now this business of buying securities from the companies, what is the practice in this respect, with respect to buying an entire issue; payable immediately or to make a contract for the purchase of an issue payable at intervals say of 3, 6, 9 or 12 months. A. We, as far as I am aware, have never entered into an agreement which contemplated the payment of the proceeds of the securities bought at intervals. We always contemplate taking up the securities in the immediate future and passing the proceeds over to the obligor as soon as the securities can be delivered, and we immediately sell the securities as soon as we have purchased them. We begin the offering as quickly after the purchase as we possibly can in order to limit of course our risk against the changes in the money.

Q. In the purchase of issues, original issues by houses of issue, it is the practice, is it not for them to immediately re-sell the securities? A. It is.

Q. You do not hold them for advance in price? A. We do not.

Q. As a matter of fact you frequently sell as much as you can before the final papers are even delivered? A. Yes sir.

Q. As soon as there is any form of understanding? A. Yes sir.

Q. It is the very essence of that business to immediately re-sell? A. It is, sir.

Q. And that is true as to all houses of issue, is it not? A. I think it is, sir.

Q. Now let us assume a case of a street railway company intending to build or acquire a system costing say 10 millions of dollars, assume the construction will take a period of say two years or three years, and that the money will be required at reasonable regular intervals during the three year period, so that so far as the company would be concerned it would be to its interest to make and sell and get the money at intervals of 3 to 6 months, just as it's needed, could securities be sold on those terms? A. I think it would be extremely difficult. The banker buys the securities with the knowledge of the financial conditions as they are at the time. He lays his plans to distribute or sell or market the securities, and he markets the entire amount of the issue as quickly as he can, and the money then is, as I have explained, delivered to the corporation as soon as the securities are delivered. The corporation may find itself temporarily with funds on hand which it may only expend over a period, but as far as I am aware there is no way that that can be avoided.

Suppose some company insisted on making a contract for the sale of securities deliverable and payable over a period of say three years, what effect would that have on the price that a company would obtain for the securities? A. It would make the financing much more expensive. It would cost a very high, it would require a very high fee to the underwriting banker, such a high fee that it would be unreasonable almost I think. It would be very difficult. As far as I know bankers don't enter into con-

tracts of that kind. They can't tell what financial conditions are going to be six months or 12 months or 18 months hence, and they find themselves in a position where they will be compelled to take up securities at a time when there is no market for them, and might be unable to borrow the money on them, might mean bankruptcy for the investing banking house which entered into a contract of that kind. An investment banker would be very reluctant to tenter into any such contract.

NOTE: Question here reread by Stenographer, as follows:

"Q. Suppose some company insisted on making a contract for the sale of securities deliverable and payable over a period of say three years, what effect would that have on the price that a company would obtain for the securities?"

Q. Now as I understand you, an attempt to sell that way would result in a lower price to the company or a higher discount or a premium or a commission to the banker. A. That is true, yes sir, very much greater discount, very much higher cost.

Q. Now let me ask you just a question in that connection a little out of place. I think we probably can all understand this better if we had a little bit better knowledge of the way this business of houses of issue and distribution of securities is conducted.

Let's assume that your company or any other house of issue were to buy 10 millions of dollars of the securities of a street railway company, how would you sell them.

A. We would first, in all likelihood, form what we call a syndicate. We would take the price we paid to the company for the bonds——

Q. (interrupting) Just so we know, a syndicate consisting of whom? A. Consisting of a great many other investment bankers, a large number of investment bankers, the number depending upon the size of the issue.

I say, as we say, we would step up the price and sell them to this syndicate at some advance over the price that we pay. We take the initial committment and we

take some profit for that committment. Then we associate with us a number of other investment dealers, and they in turn each one takes a part of the issue for his own clientele, and then the bonds are sold to the public by us at the retail price; by many others who are in the syndicate at the same price.

Q. Now those are retail houses or distributing houses that assist you in the sale of the bonds or securities. How do they conduct their business of selling; I mean through advertisement or how? A. They may advertise, they may employ salesmen, they may send circulars, and they take the necessary steps for merchandising what they have to sell that retailers do take in order to market their goods. A large part of the securities are sold, whether by us or by these other dealers, by means of personal solicitation on the part of salesmen.

Q. These distributing houses of investment bankers, keep, do they not, very large staffs of salesmen? A. They keep many salesmen.

Q. And a good bit is done by soliciting? A. A very considerable part.

Q. Taking for instance a normal issue of, say railroad securities, of say $10,000,000, have you any idea about in what lots they would be sold to these distributing houses; what the average sale would be to an investor? A. You say railroad.

Q. I mean street railway. A. Street railroad securities would probably——

Q. (interrupting) Or say gas company securities or power company securities; they are more salable aren't they? A. They are easier to sell than street railway securities. We have analyzed many issues, and the average sale we make of public utility bonds may run from $2,500 to $3,500, so a great many sales are necessary we will say in 10 millions of bonds.

Q. The average in your house runs from two to three thousand dollar lots for this type of securities. A. That's true.

Q. Of course that wouldn't apply to farm loan bonds or liberty bonds? A. No sir.

Q. Where you get the large institutions, gas companies and power companies and securities of that type the average would be between two and three thousand dollars. A. 2,500 and 3,500 dollars. It's expensive selling in other words because it don't sell in large blocks on the average.

Q. Now I have assumed a situation in which the railroad made a contract with the bankers in the beginning for the sale of all of these securities deliverable at intervals. Let me change that situation for a moment.

Suppose the same situation of a railroad, say requiring 10 millions of dollars for the purpose of construction of its property, didn't require the bankers to make the committment for the whole $10,000,000 at once, but undertook to sell first say two million dollars, with the expectation of later selling one million more and another time another million or a million and a half until they finally completed that 10 million dollars, would such securities be salable to bankers? A. It might be extremely difficult to sell them when the company attempted to sell its second block, perhaps the markets might be very unfavorable, the 2 million it sold originally might be selling at very low price in spite of what all the investment bankers who had underwritten them might have done to maintain them, and the railroad company might have run into difficulties of one kind or another; it might have had a change we will say in construction costs, and it would have become evident by that time that the cost of completing the project would greatly overrun the original estimate. Many contingencies might arise which would make it well-nigh impossible to sell any more bonds after the initial issue if the company waited.

Q. In all construction programs isn't it the practice for the houses of issue to insist for provision of the full money for the completion of the project before they will take any of it? A. That is practically the universal practice.

Q. They actully require the money to be put up before

they will sell the securities? A. Because perhaps the project would never be completed, and a half completed project is no security at all for the half of the amount put in.

Q. In other words, if a project were to fail in mid-construction it would mean there would be no salvage at all? A. Very little salvage.

Q. So if I understand you then practically for the purpose of financing on construction work of this character it is necessary first that the entire money be provided for before the work is begun in the shape of a contract with the bankers, and that the bankers insist in their contract of selling all of the securities at once and paying for them at once. A. That is true, sir.

Q. Any other alternative is most difficult and at all events expensive? A. That is true, sir.

Q. Turn now to a little different subject. We are dealing here as you know with the question of the United Railways, which is a large system. Without going into the question of the exact amount of money that would be required for the financing, let me ask you this. It is true of course that the larger the issue the more difficult the sale is, assuming that the initial issue is a reasonable amount? In other words, it's more difficult to sell 100 million than 10 million, is it not? A. That's usually the case.

Q. In other words, it's the buyer that gets the advantage of the wholesale price, not the seller? A. That is true.

Q. Let's take for illustration, so we are not confused by too large figures, the unit of $10,000,000; a railroad proposing to construct or proposing to purchase and reconstruct requires $10,000,000 of money. What return, from your judgment and experience, would an enterprise of that kind have to have or be promised in order to enlist the necessary capital? A. I think the capital could not be secured unless those providing it had a reasonable expectation of receiving 8%.

Q. At least 8? Would you think 8 was sufficient in the

case of a street railroad? A. I think it would be difficult to enlist a large amount of capital even on that basis.

Q. For a street railroad? A. For a street railroad.

Q. Suppose you take a power company. A. It would have to be at least 8% even on a power company, and the credit of power companies is much better than that of street railways at the present time.

Q. How about telephone companies? A. I think at least 8% there, and their credit is much better than street railways.

Q. Street railway companies in other words are not at present of either as high credit as power companies and telephone companies? A. They are not.

Q. Was that true January 1, 1924? A. It was.

Q. You say a promise of return of at least 8% is necessary.

Now in order to get that money you would not sell one class of securities, you would sell some bonds, some common stock, perhaps some preferred stock? A. That is true, yes sir.

Q. And the arrangement of your capitalization, that is to say the correct arrangement of your capitalization would considerably influence the cost of the money to you would it not? A. It would sir, yes.

Q. In other words if your balance between your bonds and your common stock, or your bonds, preferred stock and common stock is not correct it means that you don't get the highest credit basis for either class of security? A. That is true, yes sir.

Q. Now taking a situation of that kind, what would you think to be the best arrangement of securities for the purpose of getting the money at the cheapest rate as a whole? A. Probably in the neighborhood of 50 to 60 per cent. in bonds and the balance in common stock, possibly a small amount of preferred, but under existing conditions the difficulties of finding buyers for either preferred or common stock of street railways, I don't think very much advantage would be obtained by the

corporation by having any preferred, but possibly a small amount might make some slight advantage.

Q. But the bonds you think ought to be limited to 50 or 60 per cent. of the total. A. I do.

Q. and that would leave from 40 to 50 per cent. for stock? A. Yes sir.

Q. And that might be divided into preferred and common; you think as a whole it would be better to pick all common? A. Probably would in the initial operation.

Q. Of course, if you have several classes of securities, the larger the equity behind each class the better price you get for it. A. The better price you get for the senior securities.

Q. So that if you tried to get a large senior security for the benefit of getting the lower price, you do two things do you not, you raise the rate on your senior security and you must raise it on your junior security? A. That is true, sir.

Q. Let me put it in a different way. If, for instance, you issue say 50% in bonds and assume you could sell those bonds on a 6 or a 6½% basis, if you made your bond issue 75% you would probably have to pay a higher rate than 6 of 6½ on the entire bond issue, would you not? A. Undoubtedly.

Q. In the same way, if instead of having common stock for 50% you increased your bond issue to about 75, so as to only allow 25 per cent in common stock, it would mean that the security for common stock was just that much more jeopardized and you would still have to pay a higher rate. A. The common stock under those circumstances would be just that much more speculative, because a small decline in the earning power would practically eliminate any dividends on that stock, and it would mean that it would have to sell at a very attractive yield to a buyer to be marketable.

Q. You could make it quite speculative? A. Yes, sir.

Q. Now let's assume the situation which you think is

the best, that is to say, take 60% in bonds, and in the case of the street railways that I have referred to, say a $10,000,000 unit, what would be the interest rate that you think those bonds ought to bear to attract investors? A. In my opinion it would be necessary to sell 6½% bonds at some discount from par to the investor. In other words, a 6¾% basis to the investor.

Q. That is to say that the bonds ought to bear on their face an interest rate of 6½%, and you think that they would have to be sold to the public, however, at some discount so as to make the total yield 6¾%? A. I think so.

Q. And when you mean yield you don't mean not only the annual interest, but also taking into account the depreciation of the bond and the observation of discount at the time of maturity? A. Yes, sir.

(Commissioner Harper) Are you speaking of bonds as a first lien on that property?

(The Witness) Yes, and assuming that this is a new undertaking and the property is bonded to 60% of its value.

(Commissioner Harper) You think those bonds ought to bear such a rate as 6½%?

(The Witness) I think it would be difficult to secure the underwriting under existing conditions for a reasonably large amount of street railway company bonds unless they could be offered to the public to yield in the neighborhood of 6¾%.

(Commissioner Harper) It seems to me that's a rather high rate when the total issue would only amount to 60% of the value. A. Well, we have a good many street railway company bonds, perhaps they are not all first mortgage, but they were I think issued in the underlying bonds only up to 60% of the value, and where the earnings showed a very substantial margin above interest requirements, that are selling in the open market from 6¾ to 7 per cent basis, first mortgage on part of the property perhaps.

Q. Before you leave that subject let me ask you this question. If you, as the house of issue, are selling an entirely new issue of bonds, whether it be an old or a new company, you do not assume to get from the public the price at which those same bonds are expected to sell after they have been seasoned and well placed in the hands of investors? A. That is true.

Q. In other words, he initial sale to the public is less than it is expected they will yield after they have been well placed and after they have become seasoned. A. We are throwing a large block of new bonds on the market, and we must make the price somewhat attractive to have them quickly absorbed.

Q. If you have a bond that goes out and is successful, of course your original investors are always constant customers for more of those same bonds. A. That is true, or for other bonds we might have.

Q. But when a bond is quoted on the Stock Exchange, an outstanding bond, a seasoned bond, that is not an indication of the price at which you can make the initial sale even to the public? A. No, sir.

Q. That is if your banker's calculation is successful, they ought to sell if dealt with on the Stock Exchange at a somewhat higher price than when the wholesale issue is first made to the public. A. If that issue is what we would term a complete success after the distribution is complete, the market ought to find a level somewhat above the original issue price.

Q. As a matter of fact when you make the original issue to your customers you always do it on the belief and representation that it's going to yield them a profit rather than a loss. A. We hope so.

Q. That's the calculation upon which you sell it, that's the caclulation upon which he buys. A. Otherwise why should he buy that as compared to a great many other bonds competing with that issue?

Q. Otherwise he wouldn't buy it at all. A. That's right.

(Commissioner Harper) What are your first 4s yielding at the present time?

(Mr. Baetjer) I think it's about six. What are the 6's selling at, Mr. Miles?

(Mr. Miles) Ninety-five and a half.

(Mr. Baetjer) And they are exchangeable, and if the 6 is selling at ninety five and a half, the 4's exchangeable for them are selling on substantially the same basis.

(Commissioner Harper) A fraction over 6%.

(Mr. Baetjer) Yes, a fraction over 6%.

(The Witness) If I might explain, in regard to this local situation, I think there is a special market for the bonds of the United Railways here, and that they sell at higher figures and lower interest yield than they would sell than if you were to attempt to distribute a very large amount of similar securities and give them national distribution. In other words, we couldn't sell our investors we will will say up in Maine the United Railways' 6's at ninety five. In order to get them to buy them they would have to be on something like a six and three-quarter percent basis, but there is a small amount here, and not a great many local securities available here, and they command what I would say was a somewhat artificial market which wouldn't attract investors if you attempted to give them national distribution on a same yield basis.

(Commissioner Harper) Your answer is based upon the assumption of something happening that is not likely to happen, that is, the reproduction of an entire new Railway System in a city of this size.

(The Witness) Yes, sir, that has no record of earnings and good will established, etc.

Q. That is to say the price at which the United Railways' 4's are selling you don't think would apply to a new issue selling now? A. No.

Q. I asked you to take the case of a ten million dollar company starting, and it was on that you thought the

rate would have to be 6½ and the yield 6¾. A. Yes, on a new enterprise you are assuming.

(Commissioner Harper) I understood you to say if the plant was very much larger they would probably have to pay more.

(Mr. Baetjer) I particularly avoided that question. That's the reason I confined it to a ten million dollar corporation. I think we can carry the railway theory too far; that if we really undertook to show one hundred million dollars we would get 6¾, but it seems to me that's carrying the theoretical thing too far, and I have taken a ten million dollar company which I think is fair.

The other involved so many conjectures that I confess I can't evolve them in my mind.

(Mr. Miles) Mr. Hoyt, I do understand you to testify, however, that in the event of the more or less theoretical reproducing of this Company in this particular city, that it would have the advantage of the particular local conditions that you refer to, would it now, if you financed?

(The Witness) No, I didn't say that exactly. I say that the securities of the existing company, having come out gradually in no very large issue at any one time, and there not being a great many local issues of magnitude surfacing this market, that the people in Baltimore will buy the securities of this Company for one reason and another on a somewhat lower interest basis than you could give them national distribution.

(Mr. Miles) I understand that, but how would the same line of thought effect the reproduction now of this Company?

(The Witness) A new company; it wouldn't have had the record that this Company has had, having paid its fixed charges for years, etc., and furthermore a new company perhaps couldn't raise all the money to reproduce it immediately right in this locality.

(Mr. Baetjer) Mr. Miles, I might say I have avoided that. It wouldn't be difficult to get any banker to say if you undertook to sell fifty million at once you couldn't

do it except at a sacrifice, and it wouldn't throw much light on it. That's carrying the theoretical company too far.

(Mr. Miles) I agree with you, and it's a beautiful illustration of how silly his reproduction really is.

(Mr. Baetjer) I admit that both sides lose a little on that, but the Supreme Court has put it up to us.

The question in my mind, to put as much as one hundred million dollars on the market, you can make all sorts of inferences and it seems to me it would be much fairer to take a small issue of ten million dollars rather than take a problem of one hundred million. I should say that was too much conjecture. Any witness can testity to a ten million dollar issue, because they are doing it all the time. I think we are getting a little the worse of it, but at the same time I am satisfied with it, and that's the reason I have confined it to a ten million dollars proposition instead of one hundred million.

I will discuss with you if you desire whether Justice Braneis is right or the Supreme Court is right.

(Mr. Miles) I agree with you in everything except the statement that you are getting a little the worse of it.

(Mr. Baetjer) If we sell one hundred million we couldn't get as much for them as we did ten million. The wholesale buyers get the benefit of it.

(The Witness) In my figure of a 6¾% basis I am assuming that money to be raised nationally and in no one community where the conditions were especially favorable.

Q. (By Mr. Baetjer) Even ten million dollars? A. Even ten million dollars, yes, sir, and also assuming that this was the early part of last year, too.

Q. Now you said that you think about 60% of it ought to be in bonds bearing 6½% interest and selling to yield approximately 6¾? A. Yes.

Q. Now then the balance you thought could be best

raised by selling common stock with perhaps some preferred? A. Yes.

Q. I am assuming therefore that 40¾ of this ten million dollars is to be raised in common stock. A. 40¾ plus the discount on the bonds would have to be raised by that common stock.

Q. Yes, the discount would have to be taken into account. Without taking the discount for the moment, let's simply take the 40% for even figures for the moment at four million dollars, and if you take in the discount in the bonds, you said four points, or three. A. The discount I think would amount to in the neighborhood of ten points. I think the bankers' spread would amount to in the neighborhood of six points.

Q. I was coming to that later. A. The discount from par? Yes, sir, three or four points.

Q. Without taking into account either the Bankers' spread or the discount, let's assume that four million of dollars is to be raised in common stock; what rate of dividend would that stock have to be expected to bear in order to sell at par or near par? A. I think at least 8% for a street railway common stock.

Q. At least 8%? A. Yes.

Q. In actual dividends? A. In actual dividends to sell at par.

(Commissioner Harper) That's putting 6¾% on 60% and 8% on the 30%.

(The Witness) No, sir, that isn't quite the whole story.

Q. Now even if it paid 8% dividend, would it sell at par if the 8% exhausted the earnings. A. Not unless the 8% was protected by some earning power above that amount for a surplus. There must be surplus available in order that a cushion may be built up to take are of contingencies to protect the Company, or at least the stockholder for some change in conditions, etc.

Q. Let's assume a case where there was no surplus

over the dividend at all, so that a company undertook to distribute its book profits every year in dividends on the common stock, what do you think the result would be on the salable value of the stock? A. I think it would be very much depreciated. A stockholder would be included to believe that the Company couldn't possibly continue paying that rate of dividend very long. He would anticipate either a reduction or passing of the dividend at some future date and not distant future too, and he would take that into consideration in the price he would pay for the stock. He would discount the possibility of having some reduction in the dividend in the price which he would be willing to pay.

(Commissioner Harper) Under the financial set up that you have supposed the Company would have to earn around 9 or 10% rate of return wouldn't it?

(The Witness) Not necessarily sir. It would have to be at least 8%.

Q. The one and a half per cent. saved on the bonds would form some cushion, whether enough or not I don't know, but if it's assumed that 8% is the necessary return, and 60% in bonds yields 6½%, and the other 40% 8%, then of course you have got a safety of 1½% which you save on the bonds which would constitute a surplus. When you undertake to offer stock as a house of issue on the assumption that a Company was going to pay 8% dividends and that 8% distributed in dividends absorbed its entire net earnings, would that stock be salable? A. I don't think it would, sir.

Q. As a matter of fact in selling common stock, can they be sold to an investor without some surplus margin of earnings over their dividends? A. They can't be sold at any reasonable price.

Q. Now, have you in mind the common stocks of any good Street Railroad Systems, and can you tell us at what rate they are selling now and their yield? A. I had occasion to look into that matter, and I went back to January, 1924, inasmuch as you informed me that that was the time, or early in 1924, at which these proceedings were directed and I found that the Twin City Rapid

Transit Company common stocks, a Company serving Minneapolis and St. Paul, were selling at a price where the dividend payments amounted to something over 9% on the market value, and the earnings were something over 10%, because there was some small surplus above the dividend payments.

At the same time, Philadelphia Rapid Transit Company common stock was also selling at a price to yield over 9% with a very small surplus.

There were not many cases that I could find, actual cases that were at all analogous to the one that you have suggested, to this hypothetical case that you have suggested to me. Many street railways in this country are owned or consolidated with Electric Companies, many others are paying no dividends on their common stock, many others are complicated by expiring franchises, etc., and I know of no case where an Issuing House has underwritten the sale of common stock of Street Railways Companies in the last three or four years.

(Mr. Miles) Did you examine what this Company's stock was selling for at the time you made that examination?

(The Witness) I didn't examine it personally, although I was informed it was yielding something like 12%.

(Commissioner Harper) Would your answer to the hypothetical question suggested by Mr. Baetjer be different if the common stock was no par stock rather than par stock?

(The Witness) I don't think that would make very much difference, no sir. The return to the investor I think in the stock would have to be at least 8% and that 8% would have to be protected by a considerable margin of earning power over the amount disbursed in dividends.

Q. So that in order to sell common stock advantageously the Company must have earnings enough not only to distribute the dividend on that stock, but it must also have sufficient earnings so that there is a surplus, at

lease a book surplus, after the payment of the dividend? A. That is true sir.

Q. Otherwise the stock gets to be very speculative, does it not? A. It does.

Q. It is in fact better, is it not to pay what might be the normal dividend rate on the common stocks, let's say even 7%, and put aside three or four per cent. to reserve rather than to undertake to pay say 9% straight out as a dividend without any reserve? A. I think the stock paying 7 would perhaps sell better than the stock paying 9.

Q. That's correct. In other words, this reserve that is calculated is absolutely necessary to insure the investor of the permanency of his dividend? A. It is, sir.

Q. Coming again to the excess over the actual dividend or surplus, could you state from your experience what finally becomes of that surplus, whether the stockholders ever get it? A. The surplus is invested in properties, various purposes of the Company. Some of it may be absorbed in discounts on securities. It isn't kept in cash, it isn't kept in marketable securities, it's absorbed in the operation of the property, and if over the course of a great many years there is some surplus that is invested in such a way that it may become productive it may help the stockholders, but as a matter of fact a Company never has, as far as I am aware a Public Utility Company, in its treasury in cash an amount equal to its book surplus which it might distribute as a special dividend. It isn't there in that form.

Q. Now this book surplus, resulting from say book earnings of 8%, and a distribution of a little less than that in the shape of interest and dividends, is of course also the surplus to which the Company is obliged to charge the expense which it can't charge to operation and which it can't capitalize, isn't it? A. That's true, sir.

Q. Suppose for instance you have a fire in which you have a mere question of restoration, take the Baltimore fire, and you have accumulated a surplus, or suppose you

have a situation as the beginning of the war when the cost of operation went up much faster than it was possible to get the rates up, those losses have to be set off against the surplus, do they not? A. They do, sir.

Q. In other words every contingency that is not provided for either by capital expenditure or by maintenance has to be charged against this surplus, does it not? A. I think that's true.

Q. I am coming now to the question of these book surpluses and book reserves. I want to ask you, in your experience with Public Service Companies, whether those surpluses in Public Service Companies are real surpluses in the sense that they can be distributed to stockholders.

NOTE: Question here re-read by stenographer.

A. They are not held in such form, the surplus is not in such form, it is not in cash ordinarily in such a character of asset that you could disburse it. It's absorbed in the property and in one form or another.

Q. It might of course be invested in property which in turn would help to yield a larger return, might it not? A. That's true.

Q. And in that way increase the total value of the earning property and finally increase the distributable earnings? A. That is true, sir.

Q. If it was large enough. What I meant was, however, in your experience with Public Service Companies, Street Railway Companies particularly, whether that actually happens? A. I don't recall of any such case of a Street Railway, where by reason of having built up a surplus in the form of an additional cash dividend.

Q. What I wanted to get was simply what the attitude of the investor was towards this book surplus and book returns to the public? A. The investor looks at the surplus and the surplus earnings which were above the amount distributed as an evidence of sustained earning power, and that sustained earning power indicates the probability of a continuation of that dividend indefinitely, and that therefore when he sees a surplus on the books of the company, and a surplus earned each year,

he believes that the likelihood of a continuation of that dividend is much greater than it would be if the company were disbursing all that it earned every year.

It's an assurance of a continuation of the rate of dividend at least equal to that he is receiving currently.

Q. And that assurance is necesary is it not in order to get him to buy the stock? A. At a reasonable figure.

Q. Assuming the issue of a preferred stock by a street railway company having outstanding 50 to 60% of its total capitalization in bonds, what would be the dividend rate that that preferred stock would have to bear to sell at par? A. Well, it's a little difficult to find preferred stocks of street railways in the market commanding a favorable figure. I only know of a few instances, very few instances of recent sales of preferred stock of traction companies. The Chicago Rapid Transit Company sold an issue of preferred stock and the dividends were 7.8%. It was a monthly dividend payment, 65% a share per month and they sold that through a customer ownership campaign. It was not underwritten at par.

The Philadelphia Rapid Transit Company sold a very small amount of 7% preferred the same way at par, but none of those were handled and underwritten by bankers who would offer it in competition with other stocks bearing dividends of the same rate or better and having the same protection.

I should think that a stock such as you have assumed in this hypothetical case would have to go to the public or at least a 7½% basis, 7½ to 8.

Q. Taking your experience not merely with Street Railway Companies, but with companies with even better credits, like Power Companies and Electric Light Companies and Telephone Companies, would you say that it would be possible to sell preferred stock less than a 7% preferred stock? A. A very strong Public Utility Gas and Electric Company, might be able to sell its preferred stock at some lower dividend, but this Company that you have assumed even if it was Electric Light and Power I wouldn't assume it could sell a 7% preferred stock at any par.

Q. I am assuming an Electric Light and Power Company that has 50% of say its total capitalization in bonds and 25% in preferred stock and 25% in common stock, and it doesn't earn over what may be said a reasonable return of the whole, could that stock be sold on a better than 7% basis? A. I don't think it could. In fact I don't think the stock would net the Company a 7% basis, because there would be some discounts to come out for distribution.

Q. And such a preferred stock in the situation I have given, also has an equity of 25% behind it represented by common stock? A. Yes.

Q. And you think even with that equity behind it it must be 7% to sell? A. I think so.

Q. As a matter of fact 7% is a mighty high class preferred stock? A. Yes, sir.

(Mr. Miles) I might refer him to the 6½% preferred of the Consolidated Gas Electric Light and Power Co.

(Mr. Baetjer) Of course the Consolidated Gas Electric Light and Power Company has a situation that we can sell too if you let us have those earnings. But we are past that. That's unfortunately past all possibilities of a Street Railway. The Consolidiated was 6½%.

(Mr. Miles) Selling at 109 last night.

(Mr. Baetjer) It sold to the public at what price, Mr. Miles?

(Mr. Miles) You mean when it was brought out, Mr. Baetjer?

(Mr. Baetjer) Yes.

(Mr. Miles) I can't answer that to be frank with you.

(Mr. Baetjer) That's a different thing. That stock was 6½ and that stock sold at par.

Q. (By Mr. Baetjer) Do you know the Consolidated Gas Electric Light and Power Company? A. Only in a general way.

(Mr. Miles) You don't know it well enough to compare it with the United Railways?

(The Witness) I know of course that Company is regarded as a Company of very strong credit and very successful. There are many reasonably successful Public Utilities where the 7% stock are selling at about par or slightly below. There are outstanding cases when even the 6% stock sells at a premium.

Q. Where a stock at 6½% sells at a premium, isn't it true that it is in the case of a Company that has a very large surplus and earnings on the preferred stocks? A. I think that can be assumed.

Q. But I am assuming that a Company has 50% of bonds ahead of it and only 25% behind it of common stock and that makes a big difference in selling value, don't it? A. It does.

Q. You referred a moment ago to the sales of these securities and the bankers' spread. Let's take the discount first, and let's assume you are going to sell 60% first mortgage 6½% bonds and 40% in the common stock.

And assume that under the public regulation to which that Company is subject, the Company is entitled to earn a reasonable return upon its invested capital.

Now what discount did you have in your mind at which it would be necessary to sell those bonds to the public, that is, the retail price? A. Street Railway bonds?

Q. Yes? A. My thought was that these 6½% could be issued to the public at 96%.

Q. And at what price would you think the stock could be issued to the public? A. That's a highly hypothetical question, but I would say that if it paid 8 and earned a surplus, you couldn't expect to get more than par for it, and you couldn't sell it at par to the public unless it paid and earned more. What the discount might be on that common stock that we have assumed I don't know, because I have no direct experience, but my guess is it would be extremely difficult to get it underwritten, and——

Q. No, I mean the price to the public? A. Well, I have assumed an 8% stock at par or the same thing a 7% stock on an 8% basis.

Q. Of course in preferred stock you take account, you take into account only the dividend yield? A. That's true.

Q. No, ammortization in that? A. No.

Q. Now then, assuming that the Railroad to which you have referred undertook to sell these 60% first mortgage bonds and 40% in common stock, and went to bankers to get the money, to get the bankers to market the stock, what discount or profit between the price that the Company was to receive and the price that the public was to buy would the bankers require? In other words what would be the bankers spread, first on bonds and secondly on stock? A. I think on the bonds it may have to be 5 or 6%, particularly as conditions were in January, 1924, or thereabouts; on the preferred stock 7 to 8%, and probably on the common stock in the neighborhood of 10%, although on the common stock it is very difficult to say what would be necessary in order to get that underwritten.

Q. You think so far as the bond is concerned the bankers' spread would be six points? A. It would in fact. I know of instances where that was the case.

Q. Now you said you are sure that was true as of January 1, 1924; it might be a little less now? A. It might be a little less now because the market is better.

Q. That depends very much on the money market and the ease with which the securities are distributed? A. That is true.

Q. Now that 6% spread on bonds you say includes the cost of the bankers' profit, both the bankers that made the original commitment and the syndicate or associates with whom he associates himself, and includes also the expenses for distribution, advertisement and legal and other expenses, does it not? A. It does.

Q. On the common stock, as I understood you to say, you think that even on an 8% common stock the bankers' spread would have to be as much as 7%? A. On the common stock?

Q. Yes? A. At least 10% on the common stock.

Q. At least 10% on the common stock? A. It would be extremely difficult to market it. He would have a great deal of risk, and in order to cover the cost of distribution in the risk incurred I think any banker, if you could find him, who would underwrite a common stock of that kind, would expect to make in the neighborhood of 10%.

(Mr. Miles) You think the Company would want the common stock underwritten that way, Mr. Hoyt?

(The Witness) You are assuming here a new company just being formed?

(Mr. Miles) I am still assuming that.

(The Witness) I don't know how you could be sure of raising this ten million dollars unless you did have it underwritten.

(Mr. Miles) All right, sir.

Q. Now, I think probably counsel has in his mind that probably you would have a house to house campaign and sell it to the public? A. Yes.

(Mr. Miles) No, I haven't anything in my mind.

(Mr. Baetjer) That's been a pretty hard job.

(Mr. Miles) I have in mind it would probably be done the same way as it was done in 1899.

(Mr. Baetjer) I am very glad to hear you say that that's the right way.

(Mr. Miles) I haven't said that.

(Mr. Baetjer) And I haven't any doubt, as much as it has been criticised, it's a very economical way to get money. Still we have to assume that all stock is going to be issued under the rules and regulations of the public service law, which of course means that it must not be issued as a bonus with other securities, but that it must be sold, and in that event I understood you to say that it certainly would be a difficult task to sell common stock.

(The Witness) It would.

Q. (By Mr. Baetjer) It is a difficult task to sell com-

mon stock at any time except in a highly successful company with a record of earning power? A. It is. Unless a Company is successful it is hard to sell the common stock, unless the expectations are very great. We have speculative stocks brought out every day where the promises are great, but under regulation——

Q. I am assuming a common stock that has a limited earning power? A. Very difficult.

Q. They are very difficult to sell? A. Yes.

Q. In fact that's one of the unworked out problems of Public Utility financing, is it not? A. Well, I am assuming—of course we sometimes talk about a new corporation. If you have a corporation already in existence, which has a long record of satisfactory dividend payments on its common stock, it can sell more.

Q. Certainly? A. At a reasonable price.

Q. But that stock must not have a limitation on its earnings to get the best price? A. Well, still a Public Utility, Electric Light and Power Company, may have a limitation.

Q. You mean to say that if you have a Company that has been going on for a long while, even a Public Utility Company—— A. With established earning power and a record of success.

Q. With established earning power and a record of successful operations, the payment of dividends and accumulation of surplus behind it, that of course makes it much easier? A. Yes, makes it much easier. Then it can sell its common stock at a reasonable price.

Q. You mean without so large a spread as 10 points? A. Most stocks of that kind are issued first as you know to the existing stockholders, and then the stock is underwritten usually so that the bankers only take that part of the stock which the stockholders do not take.

Now the banker may have as much as 10 points on the stock that he actually has to take up. It depends of course upon the amount subscribed for by the existing stockholders. Sometimes there is a new issue of stock

made by bankers and not offered to the existing stockholders, and the spread to the banker would depend upon the credit of the corporation and the anticipated ease or difficulty in marketing that stock.

CROSS-EXAMINATION.

By Mr. Miles:

Q. Mr. Hoyt, as a matter of fact, because of the fact that in all of your testimony you have had to assume the unlikely situation of reproducing this company as of January 1, 1924, isn't all of your testimony very largely problematical? A. I don't know that it's problematical. It's the best opinion that I can give you from my experience.

Q. Based upon hypothesis?

(Mr. Baetjer) Now I have each time taken a $10,000,000 company so as not to get the reconstruction of this company involved in it.

Q. Mr. Hoyt, is the cost of financing generally construed in financial circles a capital or an interest charge? A. I don't know that you can say that the practice has crystalized. Some believe it's a proper capital charge and others believe it's a proper interest charge. I think if an existing company sells bonds, the interest on the bonds and the amount necessary to amortize the discount at maturity should be charged against operations.

(Mr. Baetjer) In other words, it's both.

Q. But if its a new Company you think it's a capital charge? A. The cost of financing is a broad term. I am not sure what you mean.

Q. Bankers' spread and discount, exactly what you have been testifying about? A. Of course, the cost of financing includes the loss of interest pending the time that the property goes into operation. I think most accountants agree that's a proper capital charge. The discount on the bonds, as I say, I don't think the practice has crystalized.

Q. What is your own opinion as to discount on the

bonds? A. I don't see that the banker should be very much concerned in it. Why does it make very much difference to him?

Q. I don't think it makes a particle of difference to the banker, but it might to the Commission, and I was asking you for the benefit of your views based on your experience? A. I can't answer that.

Q. You mean you can't give me your opinion, Mr. Hoyt? A. Not on the new undertaking of a construction proposition. I have already answered on an existing Company.

(Mr. Baetjer) I don't think we differ, Mr. Miles, as I understand it. The bankers' spread is capital, the discount is originally capital and amortised as against income annually. I think that's a rule of the Commission.

Q. Mr. Hoyt, let's assume that a Street Railway Company is to be built in the City of Baltimore to cost $10,000,000, using the same figure that Mr. Baetjer has used, and that Railway Company came to the National City Company to finance it and underwrite its securities, would you be good enough to tell the Commission just what plan of procedure you would follow in scrutinizing the supposed underwriting of those securities? A. Well, we would probably have our own representative, engineering force, investigate the probabilities of success of the corporation, have our counsel investigate the legality of the franchise, etc., and then we would consider the general market and the possibility of selling the securities, and what in our opinion was the price at which they could be sold. Having satisfied ourselves on all those points we would begin the formation of a syndicate.

Q. Then it's true that probably the first investigation you would make would be from an engineering viewpoint would you not? A. We would have our engineers—we wouldn't make a detailed engineering investigation, but we would ask our engineers to make what we would call rather a cursory examination to satisfy ourselves that the bonds up to the amount we proposed were well within the proper limits.

Q. Mr. Hoyt suppose your engineers reported to you that a great many lines of that particular Company parallel one another, and that those lines should be so rerouted as to make more economical the operation of that Company, would you require those changes to be made before you underwrote those bonds? A. It would effect our judgment as to the probable success of the Company.

Q. It would effect your judgment, and if your engineer told you that was the case, you would require that it be rerouted or you would not underwrite the bonds? A. That would be an operating detail that perhaps might or might not. If what you say was the case why it might mean to us that we wouldn't be quite so keen for the business, that's all.

Q. And if you did accept it it would at least effect the discount that you would charge, would it not? A. It might.

Q. Mr. Hoyt, when you talk about reproducing a company, let's take the case of Tokio, wouldn't there be some difference in the charges and cost of financing a new Street Railway Company there now in place of the old Company as it existed than if it was the first Street Railway Company that was ever built there? A. Well, it would make some difference. Of course, you assume Tokio as the city which has had a great disaster, etc., and is it to be a prominent city of the same size as formerly or not. You would have to take that into consideration.

Q. Let's assume we are going to design, build a new system in Baltimore, there isn't one here now, but had one in the past, would that effect the cost of the financing of the project? A. You mean would you take into consideration the record of the former Company here?

Q. Yes, the custom of the people? A. It probably would.

Q. Mr. Hoyt, if your Engineering Department made an appraisal of such an application as I referred to a while ago would they consider the matter of overheads and profits that had been charged for the construction

and tracks and other integral parts of the system? A. Our engineers would probably take into consideration what they believed to be reasonable overheads of all kinds when they made their appraisal.

Q. And of course if those overheads were not reasonable that would effect the willingness with which you went into the project? A. Our engineers would estimate the value of the property and in reaching that estimate they would assume certain overheads, what the existing ones were, or whether they were excessive or not. They probably wouldn't go into them but only arrive at a fair figure themselves.

(Mr. Miles) That's all.

(Examination concluded.)

Thereupon—

FRED. S. BURROUGHS,

a witness of lawful age produced on behalf of the United Railways and Electric Company having first been duly sworn according to law, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Baetjer:

Q. Mr. Burroughs, you have heard the questions and answers of Mr. Hoyt who has just been examined, and I won't go into quite the same details, but I am speaking generally with respect to the same subject that I spoke to Mr. Hoyt.

Before I do that——

(Mr. Miles) I admit he is qualified.

Q. What is your present occupation? A. I am with Harris, Forbes and Company.

Q. Of New York? A. New York, yes, sir.

Q. Harris-Forbes and Company are in what business? A. Investment bonds.

Q. They are investment bankers? A. Yes, dealers in investment bonds, buying at wholesale and distributing.

(Mr. Miles) What position do you hold?

(The Witness) I am at the head of the Department of Investigations and Reports.

(Mr. Miles) Which means what?

(The Witness) Investigating enterprises that we are asked to finance and reporting on the desirability of those enterprises as a basis for the issuance of bonds.

Q. How long have you been with Harris-Forbes and Company? A. About ten years, nine and a half, I think, to be exact.

Q. What was your occupation before that? A. I was a consulting engineer for a year or two and specializing in public utility work, immediately before that, for about five years, I was chief engineer of the Public Service Commission of Washington, and before that I was with various public utilities and railroads doing engineering work.

Q. The last ten years has been, however, with Harris, Forbes and Company? A. Yes, sir.

Q. Investment bankers? A. Yes, sir.

Q. When you said that you were an engineer for the Washington Public Service Commission you meant the Public Service Commission of the State of Washington and not the City of Washington? A. Yes, sir.

Q. Now, assuming that a Street Railway was about to engage in the purchase and reconstruction, or in the original construction of a Street Railway System to cost $10,000,000 and it sought the assistance of bankers to secure the funds, and assuming also that it would require from say two to four years to complete that system, would it be possible for such a Company to sell its bonds or other securities to the bankers, delivery in payment to be made at intervals as the construction progressed, or would it be necessary to sell all of the bonds and have the money available before the construction commenced,

and give me the reasons for your answer? A. Well, it would be necessary to sell all of the securities in advance and to have sufficient funds in hand to insure the completion of the enterprise, at least to a point where it was self sustaining. I don't mean that if you had this Railway that you would have to build the whole business at the start, but you would have to build enough so that it would be a self-supporting enterprise.

Q. In other words you would have to have enough money provided so that if the enterprise failed when that money was exhausted you had a complete operating unit. A. Yes sir.

Q. Which would mean of course in the case of a Railway sub stations, power houses, car barns, and the complete equipment of the Railway. A. Yes.

Q. Of course a Railway can't be constructed that way can it without considerable waste? A. No, certainly not.

Q. In other words, if you were building a Railway Company with say one hundred miles of mileage, you would have a certain lay out in power houses and sub stations and car barns and other things for the entire system. A. Yes sir.

Q. You wouldn't have a stretch of twenty-five miles with its own substations, power houses and car barns and other things. A. No sir.

Q. So that substantially when you are dealing with a street railway system it means that you have the entire money for the completion of the system provided for in advance. A. Yes sir.

(Mr. Miles) We admit that.

Q. Now assuming again the same street railway situation, that is to say, a Railway Company purchasing and proposing to reconstruct or proposing to originally construct a street railway system and having a capital of $10,000,000 and seeking funds for that purpose by the sale of its capital securities, what return would it be necessary for that Company to have in order to attract the necessary capital. A. Well it would have to have a

reasonable opportunity of earning at least 8% on the money invested.

Q. You say at least 8%. A. Yes sir.

Q. Suppose you take the case of a Power Company, what would its return have to be? A. I think 8% is, taking the hazards of Public Utility business into consideration, I think 8% average rate of return on the capital employed would be the minimum that would attract the necessary amount of capital to construct the property.

Q. What is the credit rating of Street Railways with respect to Power Companies and Telephone Companies, is it higher or lower? A. Of course all street railway securities are not at all in public favor at the present time. They are the most difficult securities to sell.

Q. That is as compared with other public utilities. A. With any other class of public utilities.

Q. And you say in your judgment the rate would have to be 8%. A. No, I say——

Q. At least 8%. A. Yes, it would have to be at least 8%.

Q. Now in obtaining the money for such an enterprise, the total cost of the money depends somewhat on the proper arrangement of your capital, the division into bonds, preferred stock and common stock, does it not? A. Yes sir.

Q. Now what would be the arrangement of capital that would secure for the Company the money at the cheapest rate as a whole, approximately. A. Assuming that the enterprise could be financed at the time we are talking of, I think the best arrangement would be to have about 60% of the funds provided from the sale of bonds, or rather to say bonds issued in a par amount equivalent to 60% of the cost of the enterprise and raise the balance through the sale of stock.

Q. Common or preferred. A. Well in a new enterprise it would be practically impossible to sell common stock to the public in the same sense that you sell bonds. Prob-

ably you would have to form some sort of a group to carry part of them. You might sell a small amount of preferred and the group carry the common for some time until the earning power of the enterprise had been proven, but I doubt very much if any public utility enterprise, even an Electric Light and Power Company could raise 100% of its capital requirement through the sale of securities to the Public. By the public I mean the same class of investor or the same type that you would sell bonds to. There would have to be a somewhat smaller group who could familiarize themselves with the enterprise and who would be willing to take a chance on the property proving a success.

Q. In other words that would be a group of capitalists, wouldn't it. A. Yes.

Q. Now taking the illustration with which you started what rate of interest would be the most economical and the best way to make those bonds bear. A. Well it's a little hard to say what a construction bond of a street Railway could be sold at, because even the bonds of Established Street Railways would have to be 6½'s at a discount. That is, if you would sell an issue of bonds today on a Street Railway that was a going concern you would have to sell 6½'s at a discount, and a Construction Enterprise presumably would have to have some added attraction over and above that.

Q. Let's assume it would be the basis of a construction concern. A. That would certainly pay the least.

Q. If it were a going concern the bonds would have to be 6½%. A. Yes sir.

Q. They would of course be first mortgage bonds you understand. A. Yes.

Q. And you think they would have to be 6½% to sell to the public at what price? A. Oh 96 or 97. It depends somewhat on the price of a bond.

Q. The interest rate you think therefore would be you say 6½%. Now assuming that you would issue some preferred stock, let's assume that you would issue 25% in preferred stock. A. Yes sir.

Q. Making 75% in all. What rate of dividend would that preferred stock have to bear to be salable to the public at about par. A. A Street Railway preferred would have to be oh at least 7½, probably more nearly 8.

Q. 7½ to 8%. A. Yes.

Q. Now what amount would it be necessary to give the common holders the prospect of obtaining in order to enlist this group of people to buy the common stock at about par. A. Well they would be taking all of the risk. Certainly they wouldn't come in for 8%. They would have to have in my opinion a prospect of making more than 8%, but under the most favorable conditions they would have to be assured of being able to distribute 8 year in and year out, and in order to be reasonably assured of being able to distribute that they would have to have a considerable margin of earnings over and above the dividend requirement.

Q. Now when you say assured of 8%, you don't of course mean anything like a guarantee? A. Oh no no, but I mean a Public Utility Enterprise you can't calculate the year's earnings to an exact nicety, and there are unforseen contingencies such as various interruptions of traffic, epidemics that interfere with traffic or strikes. There are many things, and if you even had a rate that under average conditions would assure you of a given earning, there are some years it's going to be a little less and some years more, and there is always the possibility of something happening that will make it very much less. So you would have to have an average earning substantially in excess of the dividend requirement.

Q. The only mention of assurance, you mean it must be their judgment or belief based on an investigation that they would be able to have a dividend of 8%. A. Yes.

Q. And not a guarantee. A. And they would have to earn more than the amount they would distribute.

Q. Now in order to sell the securities of a company of that kind, you would have to have, in addition to the earnings, you would have to have earnings sufficient not only to provide for the interest and the dividend actually

distributed, but something in addition, would you not? A. Yes sir. Each class of security will have to show its requirement earned with a substantial margin. For instance your bonds ought to show their interest earned from 1¾ to twice or better, the preferred stock ought to show the earnings after bond interest sufficient to pay the preferred stock dividend 1½ to two times. Now the common stock must also have some margin over and above the dividend requirement.

Q. In other words, this surplus or assurance of safety applies to each class of securities, does it not? A. Oh absolutely, yes.

Q. The bond holding investor requires earnings you say twice as much as the bond interest. A. Yes.

Q. Of course he gets no benefit in that except the security. Now then the preferred stock holder invtestor wants at the same time sufficient earnings to show not only his actual dividends but a surplus beyond that dividend. A. Yes sir.

Q. And the preferred stock holder probably requires less than the bond holder. A. Yes, because he gets a higher rate of return. Each time as you take a lower return on your money, you demand a higher margin of protection.

Q. Or put it the other way, the less protection and security, the higher the return demanded. A. Absolutely, yes sir.

Q. So not only does the preferred stock holder require a surplus over and above dividends, but the common stock holder requires a surplus over and above dividends. A. Oh yes, sure.

Q. Or a prospect of a surplus above the dividend. A. Yes, he has to have the opportunity to create it if he is successful in his operations. He wouldn't go into it if he were prohibited from establishing such a surplus.

Q. If you take the calculation as to what has to be made on the bonds and preferred stock and common stock, plus the surplus, I think you will find it is over 8% the way you have calculated it. A. Yes.

Q. So that when you say it has to be at least 8% you still mean that must be the minimum do you? A. Yes sir.

(Commissioner Harper) That's interest alone, isn't it?

(Mr. Batejer) Oh no no, interest is the return. Interest on his bond is 6½, and his preferred stock ought to be between 7 and 8, and his common stock 8. Of course if you take an 8% return on the entire capitalization, all you save on the bonds goes to help the surplus on the common stock.

(Commissioner Harper) But the interest rates that he has suggested result in about seven and one-quarter per cent., doesn't it?

(Mr. Baetjer) On the total?

(Commissioner Harper) Yes.

(Mr. Baetjer) No, over 8.

(Commissioner Harper) 6½ on six million——

(Mr. Baetjer) I am adding to that the surplus necessary over and above the common stock dividend.

(Commissioner Harper) Oh yes.

(Mr. Baetjer) In other words, taking into account—the way they always calculate is that you take 8% on the entire capitalization, that enables you to use the difference between the interest rate on the bonds and the interest rate on the preferred stock for the purpose of crating the surplus over and above the dividend rate on the common stock.

Q. (By Mr. Baetjer) Now coming back to that same question, can you tell us if a Company undertakes to distribute all of its earnings in the case of interest on its bonds, dividend on its preferred stock and dividend on its common stock, what effect does that have on the selling value of the common stock and the preferred stock? A. The market for those would be very much impaired, because the public wouldn't feel that there was any assurance of a continuity of that dividend rate, and they

wouldn't feel that there was the normal amount that could reasonably be distributed.

Q. Now can you tell me generally just what the attitude of investors in the purchase of securities is towards these book returns or book surpluses on Public Service Utilities? A. From what standpoint; as to their being available for distribution?

Q. No, as to whether or not they are required for the purpose of inducing investment. A. Oh yes, they are absolutely required.

Q. In other words, investors have an experience with a number of securities, and they know those that have advanced and those that have declined and the reason for it? A. Well the interest and dividend requirements that I have outlined are on the assumption that there would be an adequate surplus in addition. If these interest charges and dividends charges that I have just outlined were only barely earned, the securities would sell at a proportionately greater discount. In order to get the money at the rates I have mentioned you would have to have a reasonable surplus in addition for the purpose of protecting the continuity of those payments.

Q. Now you referred to the bankers' spread or the bankers' profits. Assuming again the condition I mentioned a while ago of a Street Railway Company purchasing and proposing to reconstruct or building for the first time a Railway System costing $10,000,000 and proposing to sell say 60% of bonds, say 25% in preferred stock and the balance in common stock, what would the cost of obtaining that money or the bankers' spread or profits be, first on the bonds and then the preferred stock and then the common? A. Do I understand 60%.

Q. I thought that was the figure you gave. A. I said 60% bonds and 40% stock.

Q. That's correct. A. But I didn't differentiate between common and preferred.

Q. All right then, take the illustration you have actually given, 60% in bonds and 40% in stock. A. Well, while I was waiting I put down the way I thought this

would be. You were talking about an enterprise requiring $10,000,000 in cash. I spoke of 8% return on the average would be required to enlist the necessary capital. That would mean an annual requirement of eight hundred thousand dollars.

Now if bonds were sold to a par amount equal to 60% of the capital cost, I believe that 6½'s could be marketed to the public at a slight discount, probably three or four points that is, at 96 or 97.

In addition there would be the bankers' discount, so that the Company would net about 90.

In other words, instead of the Company raising $6,000,000 from the sale of the bonds, it would realize $5,400,000. That would leave $4,600,000 to be raised from the sale of stock.

Now if it were decided to market a stock preferred, a face rate of 7%, it certainly couldn't be marked at above 90 right at the moment.

Q. You mean a preferred stock. A. Well I took it all at 7. As I said, I don't believe it would be possible to distribute it to the public, but I am assuming that the group who sponsored the enterprise might be induced to take a 7% stock at 90. I am a little skeptical about it, but certainly that's the top limit.

Assuming that they did take a 7% stock at 90, it would mean that to provide $4,600,000 of cash, they would have to sell or take in the aggregate about $5,100,000 of stock.

Now the interest requirement on the 6,000,000 of bonds would be $390,000 a year and the dividend requirement on the $5,100,000 of stock would be $357,000 a year, which would leave a balance of only $33,000.00 as a surplus over the dividend requirement. Now that's less than 10% of the dividend requirement. In other words, although you have earned your bond interest twice, you have only earned your dividend requirement 1.1 times.

Obviously that is too small a margin of protection, and I say I think the figures are too low. I don't think you could finance on that basis.

Q. The figures that you have just given are given however, on a total 8% return on the entire cost. A. Yes. I think it would work out you would have to sell about one-half of that balance in the form of a preferred stock which might be at 7 or 7½ at 90 or thereabouts, and that the sponsors of the enterprise would have to carry the other 20 or 25% until the earning power of the Company had been proven. I doubt, except at tremendous discounts and tremendous potential rates of return, whether you would be able to sell the final equity to the public at the outset.

CROSS-EXAMINATION.

By Mr. Miles:

Q. Mr. Burroughs, you said something about hazards of Public Utility Companies. What particular hazards of Street Railway Companies have you in mind? A. Inability to earn a return on their investment is the principal one.

Q. That's what you term a hazard. A. That's the most serious hazard I can think of.

Q. What do you think the effect of Commission regulation has been upon the rate of return of Public Utility Securities. A. I don't understand your question.

Q. What do you think the effect of Commission regulation upon Public Utility Companies has been upon the price at which those Companies can finance their securities? Has it tended to make it cheaper to finance securities or not? Is it as speculative a business as it was in other words prior to regulation or Commission control, or whatever you want to term it? A. It depends on the character of that Commission entirely. If a Commission has the right to protect a Company against competition it's beneficial, but in a good many of the states the Commission doesn't have any right to limit competition so you couldn't make a general statement.

Q. But you will agree with this statement; that where a Commission has that right and where the conduct of the Commission has been such as to indicate a desire to

be fair to both the utilities of the public—— A. Then I think the existence of a Commission is beneficial.

Q. Now I understand you to say that you were in charge of the Inspection Department. A. Yes sir, investigation and reports.

Q. You heard me ask Mr. Hoyt to state briefly what the National City Company would do if it received an application to underwrite the securities of a Company that was to build a new street railway system in the city of Baltimore, a $10,000,000 Company as an arbitrary figure.

Will you kindly tell the Commission just what your company would do under the same circumstances? A. We couldn't consider financing a construction enterprise at all. I don't think Mr. Hoyt meant that they would either. I think it was a hypothetical case. We don't finance new construction enterprises except as an adjunct for an extension of an established concern.

Q. So that none of your testimony is based upon any experience of financing such a hypothetical company as has been suggested here. Is that correct? A. No, I have rather given the rates which a Company that had proven its earning power would have to have. At the moment it would be exteremely difficult if not impossible to finance a construction of an extended street railway system.

Q. But because, as Mr. Baetjer has suggested, we are required to consider such a possibility by the courts, assuming therefore that the United Railways and Electric Company came to your Company to underwrite its securities for the construction of a new street railway system in Baltimore, you would of course have an engineering appraisal made of the supposed system would you not? A. You mean an estimate of its cost. If this is a supposed system you couldn't make an appraisal of it. You would have to make an estimate of what it was going to cost.

Q. All right, an estimate. A. Yes sir.

Q. You would do that. A. Yes sir.

Q. If your engineers reported to you in their judg-

ment numerous lines paralleled each other and the routing system was not the most economical to produce the best result, would that have some effect on your company to underwrite its securities. A. No it wouldn't make any difference in the charge that we would make to do it. It might be so bad that if the success of the enterprise was effected we wouldn't undertake it at all. We wouldn't be willing to handle a bond at a figure above just because it was poorer.

Q. I didn't mean to imply that at all. You mean in other words it would have two effects, one it might prevent you from financing it at all, or it might effect the amount of bonds that you had agreed to underwrite. A. If the system was badly laid out, yes.

RE-DIRECT EXAMINATION.

By Mr. Baetjer:

Q. Assuming the Company which I have been describing, that is a Company taking over and reconstructing a system or constructing a system new, and giving it the benefit of considering it as a going concern, and assuming that you were asked to bid on the 6½% bonds that you propose to sell that you have referred to, what would be the Banker's spread or profit. A. About five or six points.

Q. That is to say if you thought they would be sold to the public at the price you suggested, of 97, the net price to the Company would be 92. A. Well 92 would be the top, more nearly 90.

Q. Now then assuming that you sold 25% of preferred stock as you have suggested bearing 7% interest, I don't know whether you have testified as to the price it could be sold to the public at or not. A. I think I did yes.

Q. I think you said 90. A. No, the stock that I was talking about at 90, I was taking then into account——

Q. On the total set up. A. Yes. That was net to the Company. I was assuming a 7½ sell to the public at oh maybe 98, and the banker paying about 90 or a little

less for it. The banker would have to maintain the market for the stock for a considerable time after he had made his first distribution, and he would have to have a considerably wider spread than he would in the case of a bond. Bonds are put away and are not coming back into the market in quite the same degree as stocks are.

Q. By protecting the market you mean if you sold such a preferred stock, you would have to buy all that was offered by dissatisfied holders for some time. A. For quite some time. You would on the bonds too, but the amount in the case of a bond coming back in the market would not be so great as in the case of a stock. Stock is usually sold in the small size, and small holders have unforseen needs for raising money shortly after they bought their stock. In fact on securities the banker's work isn't done when he has sold to the first customer. In order to keep his clientele he must protect the markets of the securities that he distributes, and it's not at all uncommon for bankers within the course of a comparatively short time to have to repurchase and distribute anywhere from 25 to 100% of the original issue.

Q. You mean when you have customers that are not satisfied and have to sell, in order to keep too much from coming on the market at once, you buy it and resell it again until it finally lands in the hands of satisfied investors. A. Yes sir.

(Examination concluded.)

NOTE: At 4 o'clock P. M. the Commission then adjourned until Thursday, May 28, 1925, at 10.30 o'clock P. M.

CLERK'S COPY.

Vol. IV

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1919

No. 292-65

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, APPELLANT,

vs.

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND

FILED MARCH 27, 1920

No. 826-64

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND, APPELLANTS,

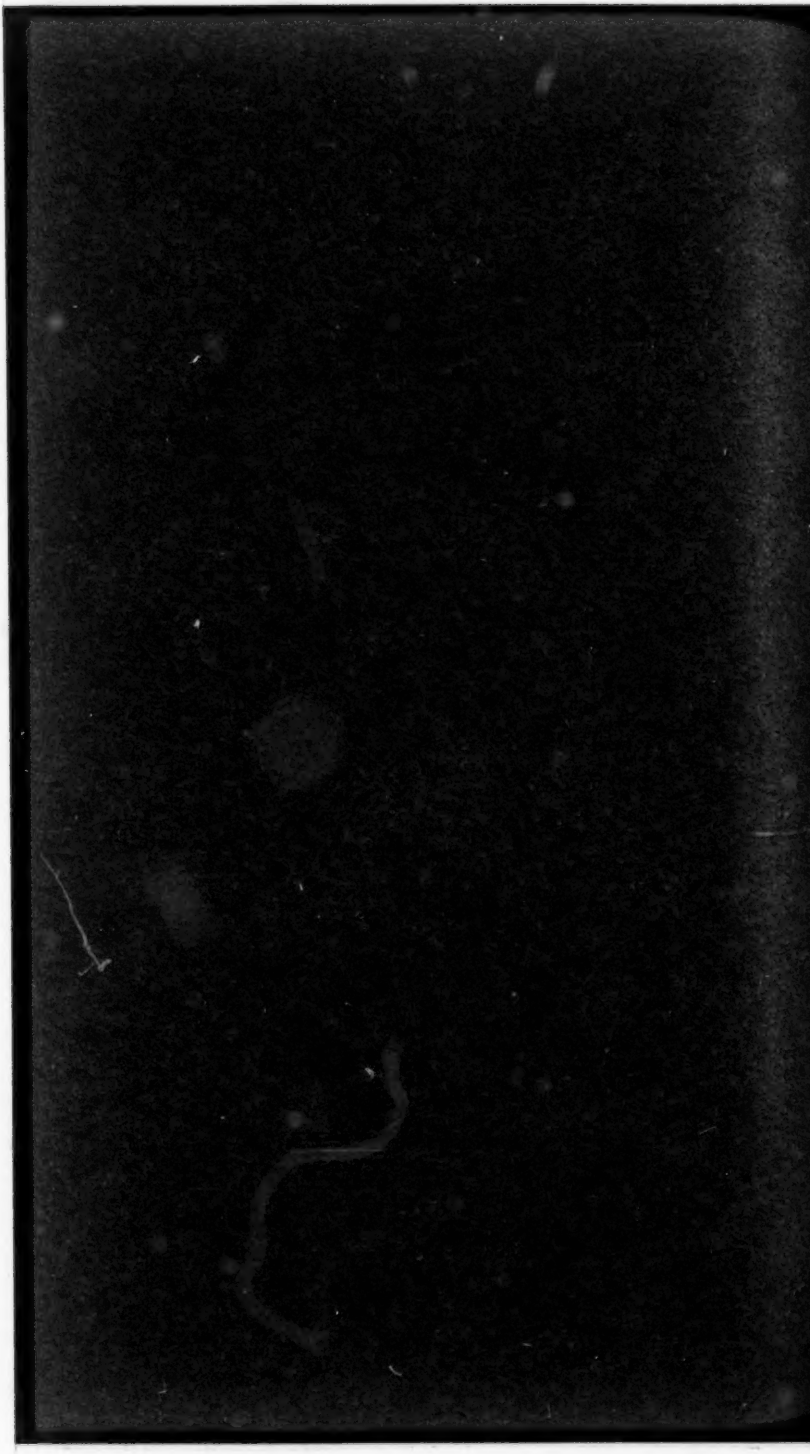
vs.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

FILED APRIL 16, 1920

APPEALS FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND

(34,101, 34,135)



(33,773, 33,774)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 464

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, APPELLANT,

vs.

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND.

No. 465

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND, APPELLANTS,

vs.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE.

APPEALS FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND

VOL. IV

INDEX

	Page
People's Counsel's Exhibit No. 13	1348
Cost of reproduction, property, and prices, as of December 31, 1913	1350

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPT. 24, 1928

	Page
Summary and detail of estimated cost when built	1352
Property and income	1354
Adjustment of gross income	1355
Summary of adjusted net additions to property	1357
Adjusted gross additions, retirements, and net additions	1358
Analysis of plant account	1368
Fixed capital, 1904 to 1911, inclusive	1371
Gross additions, retirements, and net additions to fixed capital	1372
Extraordinary expenditures account	1377
United Railway & Electric Company exhibits—List	1380
Nos. 1 and 1a—Decrease in passenger revenue	1386
Nos. 2 and 2a—Comparative statement of revenue passengers	1388
No. 3—Preliminary results of August 1912 vs. 1926	1390
No. 3a—Day-by-day comparisons	1391
No. 4—Receipts	1393
No. 5—Chart showing comparison of monthly net income for 1927 with years 1920-1926	1394
Nos. 6 and 6c—Income account, return received and rate of return, 1920 to 1926	1395
No. 7—Estimate of income for 1927	1399
No. 7b—Estimate of revenue passengers and passenger revenue for 1921	1400
No. 7c—Estimate of income for 1927	1401
Nos. 8 and 8a—Annual shortages in net income	1402
No. 9—Amount of net income	1404
No. 10—Amount of gross income	1405
No. 11—Chart, revenue passengers, population, automobile licenses	1406
No. 12—Chart, total passengers, car miles	1407
Relative changes in car miles and in total passengers	1408
No. 13—Estimated losses due to zone extensions in June, 1924	1409
No. 14—Comparative statement of earnings and expenses, 1926 and 1923	1412
No. 15—Motormen and conductors' wages, 1913-1927	1413
No. 16—Wage rates, 1913 to 1927	1414
No. 17—Comparison operating costs	1417
No. 18—Average fare paid in large eastern cities	1418
No. 19—Estimated revenue passengers, operating expenses and net income for year 1926	1419
No. 20—Comparison of cost of living with car fares and wages in Baltimore	1420
No. 21—Report on sales, merchandise outlets, number of establishments, etc	1421
No. 22—Estimates of income for 1928 at present rates of fare	1424

Page.
No. 23—Additions to and retirements from the valuation of Jan. 1, 1924..... 1425
No. 24—Estimate of net income..... 1428
No. 25—Report on depreciation..... 1429
No. 26—Comparison of daily averages of revenue passengers and change in rates of fare for Baltimore, St. Louis, and Cleveland..... 1439
No. 27—Revenue passengers, Charles St. Bus Line.... 1456
No. 27a—Number of passengers carried on the Charles St. route 1457
No. 27b—Passengers carried, Mt. Rogal Ave Bus Line. 1458
No. 28—Chart, No. 23, No. 26, car lines, city section, revenue passengers 1459
No. 29—Chart showing indices and U. R. & E. Co. costs 1460
No. 30—Gallons of motor vehicle fuel sold..... 1461
No. 31—Cost of financing..... 1462
No. 32—Passenger receipts, day-by-day comparison, 1927 and 1926..... 1463
No. 33—Chart showing dwelling permits issued..... 1464

1348

VOLUME IV

TRANSCRIPT OF RECORD

FROM THE

CIRCUIT COURT NO. 2 OF BALTIMORE CITY

IN THE CASE OF

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

VS.

HAROLD E. WEST ET AL.,

TO THE

COURT OF APPEALS OF MARYLAND.

THOMAS J. TINGLEY,
RAYMOND S. WILLIAMS,
For Appellants.

HENRY H. WATERS,
VENABLE, BAETJER & HOWARD,
HAMAN, COOK, CHESNUT & MARKELL,
JOS. C. FRANCE,
For Appellee.

(C)

PEOPLE'S COUNSEL EXHIBIT NO. 13 IN THE RAILWAYS VALUATION CASE NO. 533, FILED THURSDAY, JUNE 25, 1925, TWENTY-SECOND DAY OF THE HEARING.

533

PEOPLE'S COUNSEL'S EXHIBIT NO. 13

FILED

JUN 25 1925

PUBLIC SERVICE COM'N
OF MARYLAND

IN RE:

THE UNITED RAILWAYS & ELECTRIC COMPANY OF BALTIMORE

BEFORE

THE PUBLIC SERVICE COMMISSION OF MARYLAND

CASE NO. 533

People's Counsel's Exhibit No. 13

The United Railways & Electric Co. of Baltimore

COST OF REPRODUCTION

Property and Prices as of Dec. 31, 1915

Account	Cost of Reproduction
501 - Engineering and Superintendence	$ 1,467,498
502 - Right of Way - City	500,000
502 - Right of Way - County	176,413
503 - Other Land Used in Electric Railway Operations	1,157,455
504 - Grading	1,300,081
505 - Ballast	451,385
506 - Ties	619,276
507 - Rails, Rail Fastenings and Joints	2,221,489
508 - Special Work	1,054,330
510 - Track and Roadway Labor	1,517,228
511 - Paving	1,331,965
512 - Roadway Machinery and Tools	47,645
515 - Bridges, Trestles and Culverts	862,690
516 - Crossings, Fences and Signs	27,327
517 - Signals and Interlocking Apparatus	18,957
518 - Telephone and Telegraph Lines	635
519 - Poles and Fixtures	538,144
520 - Underground Conduits	74,138
521 - Distribution System	1,585,240
523 - Shops and Carhouses	2,226,468
524 - Stations, Miscellaneous Buildings and Structures	162,552
526 - Park and Resort Property	304,191
530 - Passenger and Combination Cars	4,325,075
531 - Freight, Express and Mail Cars	15,360
532 - Service Equipment	120,430
533 - Electric Equipment of Cars	2,867,659
536 - Shop Equipment	72,865
537 - Furniture	29,950
538 - Miscellaneous Equipment	35,765
539 - Power Plant Buildings	747,515
540 - Substation Buildings	168,321
542 - Power Plant Equipment	2,895,410
543 - Substation Equipment	884,446
544 - Transmission System	293,652
546 - Law Expenditures	146,750
547 - Interest During Construction	1,945,899
548 - Injuries and Damages	146,750
549 - Taxes	146,750
550 - Miscellaneous	1,173,996
Cost of Financing	1,716,877
Omissions and Contingencies	715,851
TOTAL	$ 36,096,424

The United Railways & Electric Co. of Baltimore

SUPERSEDED PROPERTY TO DEC. 31, 1913

S U M M A R Y

Period	Estimated Cost When Built
HORSE CAR PERIOD	$ 4,235,871
CABLE CAR PERIOD	4,168,536
ELECTRIC CAR PERIOD	3,041,894
GREAT FIRE	556,165
BRIDGES	7,356
IMPROVEMENT WORK	499,745
TOTAL	$12,509,565

D E T A I L

HORSE CAR PERIOD	
Track	$ 1,362,411
Buildings	607,880
Miscellaneous	18,200
Equipment	1,298,110
Tools and Supplies	30,000
	$ 3,316,601
Omissions and Contingencies	331,660
Overhead Costs*	839,100
Total	$ 4,487,361
Credits	251,490
Net Total	$ 4,235,871
CABLE CAR PERIOD	
Cable Stations	$ 1,135,350
Track	1,634,427
Drains	158,421
Equipment	276,500
Tools and Supplies	15,000
	$ 3,217,698
Omissions and Contingencies	321,285
Overhead Costs*	812,851
Total	$ 4,351,834
Credits	183,298
Net Total	$ 4,168,536

*Cover Engineering & Superintendence, Law Expenditures, Injuries & Damages, Taxes, Miscellaneous, Interest during Construction & Financing.

The United Railways & Electric Co. of Baltimore

SUPERSEDED PROPERTY TO DEC. 31, 1913

D E T A I L (Continued)

Period		Estimated Cost When Built
ELECTRIC CAR PERIOD		$ 904,752
	Buildings and Equipment	224,627
	Distribution System - Overhead	2,751
	Distribution System - Underground	17,658
	Pole Lines	722,760
	Track	795,990
	Cars	$ 2,668,538
	Omissions and Contingencies	247,180
	Overhead Costs*	625,365
	Total	$ 3,541,083
	Credits	499,189
	Net Total	$ 3,041,894
GREAT FIRE		$ 1,178,900
	Buildings and Equipment	8,968
	Trolley	16,954
	Overhead Feeders	1,724
	Underground Feeders	7,462
	Poles and Fixtures	$ 1,214,008
	Omissions and Contingencies	99,151
	Overhead Costs*	250,852
	Total	$ 1,564,011
	Credits	1,007,848
	Net Total	$ 556,163
BRIDGES		$ 5,806
	Harford Road	581
	Omissions	1,469
	Overhead Costs*	$ 7,856
	Total	500
	Credits	7,356
	Net Total	
IMPROVEMENT WORK		$ 351,557
	Track	21,043
	Bridges	38,960
	Sewerage Commission	17,825
	Electrical Commission	$ 429,385
	Omissions and Contingencies	37,867
	Overhead Costs*	95,804
	Total	$ 563,056
	Credits	63,311
	Net Total	$ 499,745

*See preceding page.

4

The United Railways & Electric Co. of Baltimore

PROPERTY AND INCOME

Period	Additions During Period	Property at End of Period	Average Property for Period	Estimated Working Capital	Total Property for Period	Adjusted Gross Income	Per Cent. Return on Property
April 1, 1899	$	$32,127,460	$	$	$	$	
Dec. 31, 1899	643,003	32,770,463	32,448,962	200,000	32,648,962	1,581,041◊	6.46
" " 1900	1,602,103	34,372,566	33,571,514	250,000	33,821,514	2,091,041	6.18
" " 1901	1,270,881	35,643,447	35,008,006	250,000	35,258,006	2,133,818	6.05
" " 1902	538,238	36,181,685	35,912,566	300,000	36,212,566	2,405,388	6.64
" " 1903	2,147,657	38,329,342	37,255,514	300,000	37,555,514	2,097,761	5.59
" " 1904	812,501	39,141,843	38,735,592	300,000	39,035,592	2,144,321	5.49
" " 1905	683,539	39,825,382	39,483,612	350,000	39,833,612	2,344,510	5.89
" " 1906	2,013,265	41,838,647	40,832,014	400,000	41,232,014	2,244,065	5.44
" " 1907	2,481,806	44,320,453	43,079,550	450,000	43,529,550	2,578,719	5.92
" " 1908	946,541	45,266,994	44,793,724	450,000	45,243,724	2,580,063	5.70
" " 1909	444,202	45,711,196	45,489,095	450,000	45,939,095	2,911,280	6.34
" " 1910	820,024	46,531,220	46,121,208	500,000	46,621,208	3,030,103	6.50
" " 1911	1,155,856	47,687,076	47,109,148	500,000	47,609,148	3,437,179	7.22
" " 1912	334,874	48,021,950	47,854,363	500,000	48,354,363	3,490,337	7.22
" " 1913	584,339	48,606,989	48,313,820	500,000	48,813,820	3,507,327	7.19
" " 1914	789,572	49,396,561	49,000,775	600,000	49,600,775	3,574,420	7.21
" " 1915	363,601	49,759,162	49,577,362	700,000	50,277,362	3,616,872	7.19
" " 1916	763,724	50,522,886	50,141,024	800,000	50,941,024	3,893,489	7.64
" " 1917	1,972,263	52,495,149	51,509,018	1,200,000	52,709,018	3,772,548	7.16
" " 1918	1,985,675	54,480,824	53,487,986	1,500,000	54,987,986	3,253,942	5.92
" " 1919	1,899,855	56,380,679	55,430,752	1,500,000	56,930,752	3,165,420	5.56
" " 1920	1,970,792	58,351,471	57,366,075	1,500,000	58,866,075	3,992,350	6.78
" " 1921	3,299,354*	55,052,117	56,701,794	1,400,000	58,101,794	3,820,893	6.58
" " 1922	593,250	55,645,367	55,348,742	1,400,000	56,748,742	4,095,352	7.22
" " 1923	688,271	56,333,638	55,989,502	1,400,000	57,389,502	4,307,975	7.51
Weighted Average Per Cent. Return							6.56

* Reverse Item
◊ Nine Months

The United Railways & Electric Co. of Baltimore

ADJUSTMENT OF GROSS INCOME

April 1, 1899 to Dec. 31, 1923

Year	Reported Gross Income	Operating Adjustments in Profit and Loss Dr.	Operating Adjustments in Profit and Loss Cr.	Adjustment of Extraordinary Expenditures#	Adjusted Gross Income
1899	$ 1,581,042	$	$	$	$ 1,581,042
1900	2,091,041				2,091,041
1901	2,133,818				2,133,818
1902	2,405,388				2,405,388
1903	2,461,700	424,313	60,374		2,097,761
1904	2,117,571	195,726	10,565	211,911*	2,144,321
1905	1,758,760			585,750*	2,344,510
1906	2,820,378	44,736		531,577	2,244,065
1907	2,989,990	30,578		380,693	2,578,719
1908	2,943,774	62,623		301,088	2,580,063
1909	3,200,056	82,789		205,987	2,911,280
1910	3,383,197	37,074	3,678	319,698	3,030,103
1911	3,621,746		9,109	193,676	3,437,179
1912	3,498,637	8,300			3,490,337
1913	3,527,078	19,751			3,507,327
1914	3,589,656	15,236			3,574,420
1915	3,612,602	4,785	9,055		3,616,872
1916	3,947,559	65,911	11,811		3,893,459
1917	3,781,777	11,171	1,942		3,772,548
1918	3,416,003	176,400	14,339		3,253,942
1919	3,493,140	345,100	17,380		3,165,420
1920	4,264,077	275,468	3,741		3,992,350
1921	3,944,961	126,916	2,848		3,820,893
1922	4,109,204	98,641	84,689		4,095,352
1923	4,199,090	28,434	137,319		4,307,975
	$78,892,244	$ 2,053,852	$ 366,850	$ 1,135,058	$76,070,184

* Reverse items
@ Nine months
# Extraordinary Expenditures for 1904 and 1905 were charged as operating expenses; but for the years 1906 to 1911 inclusive they were deducted from Net Income.

Total Extraordinary Expenditures 1904 to 1911		$ 6,417,185
Amount Charged to Capital in 1920	$ 4,015,999	
Amount Charged to Operating Expenses 1904 & 1905	1,266,128	5,282,127
Net Adjustment		$ 1,135,058

6

The United Railways & Electric Co. of Baltimore
The Maryland Electric Railways Co.
Baltimore, Sparrows Point & Chesapeake Ry. Co.
Baltimore, Halethorpe & Elkridge Ry. Co.

SUMMARY OF ADJUSTED NET ADDITIONS TO PROPERTY

from April 1, 1899 to Dec. 31, 1913

Year Ending Dec. 31st	The United Rys. & Elec. Co. — Adjusted Net Book Additions	The United Rys. & Elec. Co. — $4,015,999 Charged to Capital in 1920 Prorated to Years When spent	The United Rys. & Elec. Co. — Total Including Prorate	The M.E. Ry.Co.	B. S.P. & C.Ry. Co.	B. H. & E.Ry. Co.	Consolidated
1899	$ 643,003	$	$ 643,003	$	$	$	$ 643,003
1900	1,602,103		1,602,103				1,602,103
1901	1,270,881		1,270,881				1,270,881
1902	538,238		538,238				538,238
1903	483,243		483,243		1,664,414		2,147,657
1904	479,922	211,911	691,833		120,668		812,501
1905	94,618	585,750	680,368		3,171		683,539
1906	195,963	905,116	1,101,079	607,508	304,678		2,013,265
1907	14,066	648,206	662,272	1,770,348	49,186		2,481,806
1908	11,461*	512,663	501,202	356,626	15,834*	104,547	946,541
1909	10,266*	350,733	340,467	96,096	-	7,639	444,202
1910	14,310	544,351	558,661	241,588	18,687	1,088	820,024
1911	525,030	257,269	782,299	373,557	-	-	1,155,856
1912	20,272	-	20,272	314,302	-	-	334,574
1913	462,875	-	462,875	121,464	-	-	584,339
Total	$ 6,322,797	$ 4,015,999	$10,338,796	$ 3,881,489	$ 2,144,970	$ 113,274	$16,478,529

*Reverse items

The United Railways & Electric Co. of Baltimore

ADJUSTED GROSS ADDITIONS, RETIREMENTS AND NET ADDITIONS

				Adjusted Net Additions
1899 - Gross Additions		$1,248,202		
Deductions				
Organization Charges (See Memo. attached)	$ 509,484			
Injury and Damage claims prior to consolidation	79,065			
Md. Trust Co. a/c B.M.R. & S.Pt. R.R.	35,952			
Md. Trust Co. a/c B. & N.E. Ry. Co.	26,483			
B. & O. R.R. Co. - Electric Current Adjustment	3,996			
Central Ry. - Coupon interest due prior to consolidation	1,275			
Taxes due prior to consolidation	611			
Miscellaneous Petty Items	3,396			
Total Deductions	$ 660,262			
Add Depreciation Apr. 1 - Dec. 31,1899 deducted in error	90,000			
Net Deductions from Gross Additions		570,262		
Adjusted Gross Additions			$ 677,940	
Gross Retirements		$ 85,295		
Deductions				
Transferred to Accts. Rec. and eventually to Investments	$ 1,881			
Contra to Debt Retirement of B.T.Co. Conv. Bonds	18,000			
Taxes Adjusted through Expense	30,477			
Net Deductions from Gross Retirements		50,358		
Adjusted Gross Retirements			34,937	
Adjusted Net Additions				$ 643,003

The United Railways & Electric Co. of Baltimore

ADJUSTED GROSS ADDITIONS, RETIREMENTS AND NET ADDITIONS

				Adjusted Net Additions
1900 - Gross Additions		$1,947,300		
Deductions				
Organization Charges (See Memo. attached)	$ 8,672			
Interest on $3,000,000 Bonds @ 4%, Mar 1 - Apr. 20,1900 (Bonds were sold flat and no accrued interest)	16,667			
Discount on Funded Debt	157,500			
Settlement of Injury and Damage claims prior to consolidation	38,534			
Taxes due prior to consolidation	104			
Open Accounts - Colliseum Co.	2,035			
Amount paid Geo. Webb for B. & N. stock	6,635			
Miscellaneous Petty Items	2,404			
Depreciation Acct. 1, Dec. 31,1899 added in error	90,000			
Net Deductions from Gross Additions		322,551		
Adjusted Gross Additions			$1,624,749	
Gross Retirements		$ 35,216		
Deductions				
Contra to Debt Retirement of B.T.Co.'s Conv. Bonds	$ 12,000			
Taxes adjusted through Expense	570			
Net Deductions from Gross Retirements		12,570		
Adjusted Gross Retirements			22,646	
Adjusted Net Additions				$1,602,103

6

The United Railways & Electric Co. of Baltimore

ADJUSTED GROSS ADDITIONS, RETIREMENTS AND NET ADDITIONS

				Adjusted Net Additions
1901 - Gross Additions		$1,479,762		
Deductions				
Loss of interest on $1,330,000 4% Bonds sold	$ 1,055			
Loss of interest on $1,508,000 4% Bonds sold	27,362			
Discount on Funded Debt	170,280			
Settlement of Injury and Damage claims prior to consolidation	7,955			
Miscellaneous Petty Items	172			
Total Deductions		206,831		
Adjusted Gross Additions			$1,272,931	
Gross Retirements		$ 3,249		
Deductions				
Contra to Debt Retirement of B.T.Co. Conv. Bonds	$ 1,000			
Taxes, etc. adjusted through Expenses	192			
Net Deductions from Gross Retirements		1,192		
Adjusted Gross Retirements			2,050	
Adjusted Net Additions				$1,270,881

The United Railways & Electric Co. of Baltimore

ADJUSTED GROSS ADDITIONS, RETIREMENTS AND NET ADDITIONS

				Adjusted Net Additions
1902 - Gross Additions		$1,898,134		
Deductions				
Cancellation and destruction of the following Bonds credited to Balto. Cons. Ry.Co. at time of consolidation:				
Pimlico & Pikesville Ry.Co. 1st 5% Bonds	$ 350,000			
Walbrook, Gwynn Oak & Powhatan 1st 5% Bonds	100,000			
Balto. & Curtis Bay Ry.Co. 1st 5% Bonds	350,000			
Shore Line Elec. Rys. Co. 1st 5% Bonds	200,000			
Settlement of Injury & Damage claims prior to consolidation	6,434			
Miscellaneous Petty Items	1,241			
Total Deductions		$1,007,885		
Adjusted Gross Additions			$ 890,149	
Gross Retirements		$ 59,960		
Deductions				
Contra to Debt Retirement of B.T.Co. Conv. Bonds	$ 8,000			
Taxes etc. adjusted through Expense	48			
Net Deductions from Gross Retirements		8,048		
Adjusted Gross Retirements			51,911	
Adjusted Net Additions				$ 838,238

The United Railways & Electric Co. of Baltimore

ADJUSTED GROSS ADDITIONS, RETIREMENTS AND NET ADDITIONS

				Adjusted Net Additions
1903 - Gross Additions		$1,987,045		
Deductions				
Loss on sale of 40,000 shares U.E.Lt. & P. Co. Common Stock, 25,000 Bonds of the Mt. Wash. E. Lt. & P. Co. & 8,050 shares of the Mt. Wash. E. Lt. & P. Co. Common Stock, sold to Continental Trust Co., Agents for syndicate	$1,476,635			
Settlement for Injury & Damage claims prior to consolidation	2,225			
Paid J. M. Heighe - Purchase of & int. on, stock of B. & N.E. Ry. Co.	476			
Miscellaneous Petty Items	98			
Net Deductions from Gross Additions		1,479,434		
Adjusted Gross Additions			$ 507,611	
Gross Retirements		$ 399,860		
Deductions				
Amount to close Ticket Liability a/c B. C. Rys. obligation	$ 242			
Taxes etc. adjusted through Expense	165			
Profit arising from Cash & Stock adjustment in organization of B. S. Pt. & C. Ry.Co., being difference received for B.M.R & Sp. Pt. Ry. Co. & D. S. Pt. & N. Ry. & Book Value	375,085			
Net Deductions from Gross Retirements		375,492		
Adjusted Gross Retirements			24,368	
Adjusted Net Additions				$ 483,243

The United Railways & Electric Co. of Baltimore

ADJUSTED GROSS ADDITIONS, RETIREMENTS AND NET ADDITIONS

				Adjusted Net Additions
1904 - Gross Additions		$ 491,778		
Deductions				
Miscellaneous Petty Items	$ 80			
Net Deductions from Gross Additions		80		
Adjusted Gross Additions			$ 491,698	
Gross Retirements		$ 65,264		
Deductions				
Contra to Debt Retirement of B.T.Co. Conv. Bonds	$ 23,000			
"Balto. City Pass. Ry. Co. - Representing profit on sale of $300,000 B. M. R. & S.Pt. Co's. Bonds sold for $300,000, purchase price being $270,000 profit being credited to Profit and Loss Dec. 31,1903 in error, now credited to Plant as the Bonds were brought over as an Asset of B. C. Pass. Ry. Co. and 4% Bonds of this issue, issued in payment of same. Therefore any profit is a credit to Plant."	30,000			
Amount to close Ticket Liability	488			
Net Deductions from Gross Retirements		$ 53,488		
Adjusted Gross Retirements			$ 11,776	
Adjusted Net Additions				$ 479,922

3

The United Railways & Electric Co. of Baltimore

ADJUSTED GROSS ADDITIONS, RETIREMENTS AND NET ADDITIONS

			Adjusted Net Additions
1905 - Gross Additions		$ 98,881	
Gross Retirements	$ 24,263		
Deductions			
Contra to Debt Retirement of B.T. Co. Conv. Bonds	25,000		
Adjusted Gross Retirements		1,263	
Adjusted Net Additions			$ 94,618
1906 - Gross Additions	$ 244,858		
Deductions			
Discount on Funded Debt	24,060		
Adjusted Gross Additions		$ 220,798	
Gross Retirements	$ 25,285		
Deduction			
Sale of B.C.Pass.Ry.Co.'s stock in Electric Park Co.	450		
Adjusted Gross Retirements		24,835	
Adjusted Net Additions			$ 195,963
1907 - Gross Additions		$ 381,721	
Gross Retirements		367,655	
Adjusted Net Additions			$ 14,066
1908 - Gross Additions		$ 32,462	
Gross Retirements		43,923	
Adjusted Net Additions			$ 11,461*

*reverse items

The United Railways & Electric Co. of Baltimore

ADJUSTED GROSS ADDITIONS, RETIREMENTS AND NET ADDITIONS

					Adjusted Net Additions
1909 - Gross Additions			$ 99,972		
Gross Retirements			110,238		
Adjusted Net Additions					$ 10,266*
1910 - Gross Additions			$ 59,262		
Gross Retirements	$ 46,530				
Deduction					
Closing out Ticket Liability a/c C. & S. R.R.Co.	1,578				
Adjusted Gross Retirements			44,952		
Adjusted Net Additions					$ 14,310
1911 - Gross Additions			$ 569,422		
Deductions					
Premium on Car Trust Certificates Redeemed					
Series "B" $340,000	$ 8,500				
" "C" $195,000	4,875				
	$ 13,375				
Less Amount charged to Unextinguished Discount on Securities	1,500				
Amount Charged to Plant a/c			11,875		
Adjusted Gross Additions				$ 557,547	
Gross Retirements				32,517	
Adjusted Net Additions					$ 525,030

*Reverse items.

The United Railways & Electric Co. of Baltimore

ADJUSTED GROSS ADDITIONS, RETIREMENTS AND NET ADDITIONS

1912 - Gross Additions		$ 466,687		
Deductions				
Copy of Entry "Construction & Equipment, Plant - For this amount to dispose of difference between the value of Common Stock set up during the year 1912 Credit	$ 870,000			
and $435,000 Collateral Trust Conv. Notes converted 1912 on basis of $25.00 a share for stock the par of which is $50.00 as set forth in Indenture of July 15,1911 Debit"	435,000			
Balance Debit		436,000		
Adjusted Gross Additions			$ 31,687	
Gross Retirements			11,415	
Adjusted Net Additions				$ 20,272
1913 - Gross Additions	$2,755,081			
Deductions				
Difference between Common Stock (par $50.00) $4,544,200 and par of 3 year Conv. Notes $2,272,100 converted, Balance Debit charged to Plant	2,272,100			
Adjusted Gross Additions			$ 482,981	
Gross Retirements			20,106	
Adjusted Net Additions				$ 462,875

Baltimore, Sparrows Point & Chesapeake Railway Co.

ADJUSTED GROSS ADDITIONS, RETIREMENTS AND NET ADDITIONS

				Adjusted Net Additions
1903 - Gross Additions			$2,133,414	
Deductions				
In the organization of the Balto.,Sparrows Pt. and Ches. Ry.Co. the United Co. was paid $400,000 in Cash and $400,000 in Stock. Apart from the $400,000 added to the U. Rys. & E.Co. Capital, there was debited to Sparrows Pt. Capital Stock and Cash issued to the United Co.	$ 800,000			
Deduct from this actual cost of Stock to United Co., as shown by books	32,915			
Difference	$ 767,085			
Contra actual reduction of Plant a/c on books of United Co.	375,085			
Remainder for elimination from Sparrows Pt. Capital		$ 392,000		
Interest on $300,000 Balto. Middle River & S.Pt.R.R.Co. Bonds		77,000		
Net Deductions from Gross Additions			469,000	
Adjusted Gross Additions			$1,664,414	
Adjusted Net Additions				$1,664,414
1904 - Gross Additions			$ 370,668	
Deductions				
Discount on Bonds			250,000	
Adjusted Gross Additions			$ 120,668	
Adjusted Net Additions				$ 120,668
1905 - Net Additions from books				$ 3,171
1906 - " " " "				$ 304,678
1907 - " " " "				$ 49,186
1908 - " " " "				$ 15,834*
1910 - " " " "				$ 18,687

*Reverse item.

The United Railways & Electric Co. of Baltimore

MEMO RE:

ANALYSIS OF PLANT ACCOUNT - D E C E M B E R 31, 1899, INC.

(Organization Charges)

Dr.

Cash-book 1, fol. 3,	Stamp tax on Income Mortgage Bonds,	$ 7,000.00	
" " 1, " 21,	Recording Mortgages,	52.00	
" " 1, " 21,	Stamp-tax on Stock Certificates,	5,417.85	
Journal 1, " 40,	Alex. Brown & Sons, Bankers, Commissions, cost of examination of properties and records - services of Trust Companies, etc.	381,280.88	
Voucher Record 1, fol. 1,	Engraving Certificates - $1,960, Printing $628.50, Advertising $61.05, Services of Stenographer $27.00, Stamps $18.75.	2,685.28	
Ledger C1, Fol. 11,	Stamp tax on 1st Mortgage Bonds and Real Estate assessment, cost of recording mortgages, deeds, &c., as displayed on journal 1, folios 6, 11, and 17,	27,899.68	
Journal 1, fol. 51,	Cost of books, printing forms, &c. to open business of new company.	2,280.45	
Journal 1, Fol. 53,	Difference between par value $1,000. and market price $980.00 at which price 193, bonds were sold to Mess. Alex. Brown & Sons to assist in paying expenses of consolidation,	3,860.00	
		1,573.35	
Voucher Record, Fol.5,	Printing books, forms, &c.	2,500.00	
Cash Book 1, Fol.101,	Revenue stamps for $5,000,000 Common Stock Issued	20,000.00	
Cash Book 1, " 101,	E.J.D. Cross, Attorney services in connection with organization,	10,000.00	
" " 1, " 105,	A.W.Machen, Atty. services in connection with organization,	10,000.00	
" " 1, " 105,	Arthur Geo. Brown, Atty. services in " " "	1,666.68	
Cash Book 1, " 125,	Salary A. B. Clark, Treas., B.C. Pass. Ry.Co., May 1, to Dec. 31, 1899,	9,500.00	
Journal 1, " 74,	Maryland Trust Co., Fee as Trustee of $14,000,000.00 mortgage, and issuing $13,000,000.00 Common Stock,	111.25	
Journal 1, " 76,	Maryland Trust Co., necessary books and forms for their records,	4,800.00	
Journal 1, " 77,	Western Bank Note and Engraving Co. engraving 20,000 bonds,	2,500.00	
" 1, " 85,	Western Bank Note and Engraving Co. Printing and Engraving 14,000 Income Bonds,	9,652.00	
" 1, " 101,	Continental Trust Co., services as Trustee, and certifying to 19,304 1st Mortgage 4% Bonds	2,400.00	
" 1, " 103,	Western Bank Note & Engraving Co., Printing 10,000 Coupon Bonds, Nos. 20,001 to 30,000,	1,920.00	
" 1, " 127,	Western Bank Note & Engraving Co., Printing from steel plates 8,000 bonds 100 coupons Nos. 30,001, up in book form	15,000.00	
Cash Book 1, Fol.261,	E.J.D.Cross, Atty. professional services rendered in connection with organization,	$ 522,099.42	
	Carried forward		

The United Railways & Electric Co. of Baltimore

MEMO. RE:

ANALYSIS OF PLANT ACCOUNT - D E C E M B E R 31, 1899, INC.

(Organization Charges) Continued

Dr.

		Brought forward	$ 522,099.42
Journal	1, Fol.150,	Western Bank Note & Engraving Co., engraving and printing from steel plate 28,000 sheets of Warrants for Income Bonds 1 to 14,000	4,225.00
Cash Book	1, Fol.279,	Maryland Trust Co. Internal Revenue stamps placed on 40,000 Shares U.R. & E.Co. Common Stock,	1,000.00
Journal	1, Fol.178,	Continental Trust Co.-certifying 1,200 - 1st Mortgage 4% Bonds Nos. 19305 to 20,504,	600.00
		Miscellaneous petty amounts	333.90
		Total Dr.	$ 528,258.32

Cr.

Journal	1, fol. 69,	Accrued interest Nov. 1, '98, to March 1, '99, @ 5% on $1,111,000 B. & N. E. Ry. Co. Bonds exchanged Mar. 1, 1899 for the U.R.&E.Co's. 4% Bonds, included in bill of Messs. Alex. Brown & Sons and charged to organization expense until amount could be adjusted.	$ 18,516.67
Cash Book	1, " 154,	Check drawn for tax on B.Cons. stock but never used	107.64
		Miscellaneous petty amounts	150.17
		Total Cr.	$ 18,774.48
		Net Dr.	$ 509,483.84
Journal	1, fol.197,	Less amount set aside for depreciation from April 1, to Dec. 31, 1899, 9 Mos. @ $10,000.00	90,000.00
		Net to Plant Account	$ 419,483.84

The United Railways & Electric Co. of Baltimore

MEMO RE:

ANALYSIS OF PLANT ACCOUNT - D E C E M B E R 31, 1900, INC.

DEPRECIATION			$ 90,000.00
To return amount to this account deducted in 1899.			
ORGANIZATION			7,506.50
Journal 1, fol. 202, Continental Trust Co. Certifying 1st Mtge. 4% Bonds		$ 44.50	
Cash Book 1, " 389, Thos. Groom & Co. cost of registering bonds,		62.00	
" " 1, " 395, E.J.D.Cross, Legal services in connection with organization of Light Co.		6,000.00	
Journal 1, " 249, Continental Trust Co. Certifying bonds,		900.00	
Cash Book 1, " 233, J. L. Lemon, Legal services in connection with Income Bonds		500.00	
FRANCHISE			1,165.95
Cash-Book 2, fol. 47, T.C. Slingluff, Atty. Gen'l Counsel, for payment of various Attorneys bills for services rendered in protesting against passages of two ordinances of Maryland Electric Co. on two occasions,		500.00	
Cash-Book 2, fol.105, do.		665.95	
Total to Plant Acct.			$ 98,672.45

June 3, 1925

The United Railways & Electric Co. of Baltimore

FIXED CAPITAL - 1904 to 1911 INCLUSIVE - SEGREGATED PRO-RATA FROM EXTRAORDINARY EXPENDITURES FOR THE PERIOD - 1904 to 1911 INCL.

Extraordinary Expenditures for the period		$6,417,184.59
Amount transferred to Road and Equipment in 1920		4,015,998.75
-do-		63%

	Extraordinary Expenditures		Pro-rated Fixed Capital
1904	$ 336,366.27	63%	$ 211,911.00
1905	929,761.96	"	585,750.00
1906	1,436,692.98	"	905,116.00
1907	1,028,899.31	"	648,206.00
1908	813,751.05	"	512,663.00
1909	556,720.25	"	350,733.00
1910	864,048.66	"	544,351.00
1911	450,944.11	"	257,268.75
	$6,417,184.59		$4,015,998.75

(Signed) H. M. Grafton
Ass't Auditor

HMG/FTK

Mr. Black.
" Waltbie.
" Waters.

2

The United Railways & Electric Co. of Baltimore
The Maryland Electric Railways Co.
Baltimore, Sparrows Point & Chesapeake Ry. Co.
Baltimore, Halethorpe & Elkridge Ry. Co.

GROSS ADDITIONS, RETIREMENTS AND NET ADDITIONS TO FIXED CAPITAL

For Ten Years from Jan. 1, 1914 to Dec. 31, 1923

	Gross Additions	Retirements	Net Additions
1914 - Year Ending Dec. 31st	$ 836,490	$ 46,918	$ 789,572
1915 - " " " "	418,072	54,471	363,601
1916 - " " " "	921,711	157,987	763,724
1917 - " " " "	2,540,863	568,600	1,972,263
1918 - " " " "	2,233,808	248,133	1,985,675
1919 - " " " "	1,987,086	87,231	1,899,855
1920 - " " " "	2,461,173	490,381	1,970,792
1921 - " " " "	1,477,542	4,776,896	3,299,354*
1922 - " " " "	1,082,260	489,010	593,250
1923 - " " " "	934,034	245,763	688,271
Total	$14,893,039	$ 7,165,390	$ 7,727,649

*Reverse item

The United Railways & Electric Co. of Baltimore

GROSS ADDITIONS, RETIREMENTS AND NET ADDITIONS TO FIXED CAPITAL

For Ten Years from Jan. 1, 1914 to Dec. 31, 1923

	Gross Additions	Retirements	Net Additions
1914 - Year Ending Dec. 31st	$ 364,781#	$ 46,918	$ 317,863
1915 - " " " "	417,596	54,471	363,125
1916 - " " " "	832,443	126,213	706,230
1917 - " " " "	1,605,743	64,810	1,540,933
1918 - " " " "	1,959,746	248,133	1,711,613
1919 - " " " "	964,511	87,231	877,280
1920 - " " " "	2,328,065@	171,025	2,157,040
1921 - " " " "	1,221,433	4,733,457	3,512,024*
1922 - " " " "	1,048,065	182,263	865,802
1923 - " " " "	827,787	242,213	585,574
Total	$11,570,170	$ 5,956,734	$ 5,613,436

*Reverse item

#Gross Additions - Company's Reports	$388,281
Difference between Common Stock (Par $50) and par 3 yr. Convertible Notes for which exchanged at $25	23,500
Adjusted Gross Additions	$364,781

@Gross Additions - Company's Reports	$6,344,064
Transferred from Extraordinary Expenditures for Prior Years (1904-1911)	4,015,999
Adjusted Gross Additions	$2,328,065

The Maryland Electric Railways Co.

GROSS ADDITIONS, RETIREMENTS AND NET ADDITIONS TO FIXED CAPITAL

For Ten Years from Jan. 1, 1914 to Dec. 31, 1923

	Gross Additions	Retirements	Net Additions
1914 - Year Ending Dec. 31st	$ 467,925	$ -	$ 467,925
1915 - " " " "	-	-	-
1916 - " " " "	88,107	26,294	61,813
1917 - " " " "	860,883	503,790	357,093
1918 - " " " "	168,690	-	168,690
1919 - " " " "	726,057$	-	726,057
1920 - " " " "	81,582	319,356	237,774*
1921 - " " " "	226,192	40,167	186,025
1922 - " " " "	6,763	304,052	297,289*
1923 - " " " "	47,646	500	47,146
Total	$2,673,845	$1,194,159	$1,479,686

*Reverse item

$Gross Additions - Company's Reports	$130,557
50 Cars from United States Shipping Board Emergency Fleet Corporation	508,000
10 Cars from United States Housing Corporation	87,500
Adjusted Gross Additions	$726,057

Also see Memoranda Attached

Baltimore, Sparrows Point & Chesapeake Railway Co.

GROSS ADDITIONS, RETIREMENTS AND NET ADDITIONS TO FIXED CAPITAL

For Ten Years from Jan. 1, 1914 to Dec. 31, 1923

	Gross Additions	Retirements	Net Additions
1914 - Year Ending Dec. 31st	$ 3,784	$ -	$ 3,784
1915 - " " " "	-	-	-
1916 - " " " "	243	5,480	5,237*
1917 - " " " "	70,010	-	70,010
1918 - " " " "	105,040	-	105,040
1919 - " " " "	296,518	-	296,518
1920 - " " " "	51,526	-	51,526
1921 - " " " "	29,917	3,272	26,645
1922 - " " " "	27,432	2,695	24,737
1923 - " " " "	55,768	3,050	52,718
Total	$ 640,238	$ 14,497	$ 625,741

*Reverse item.

23

Baltimore, Halethorpe & Hikridge Railway Co.

GROSS ADDITIONS, RETIREMENTS AND NET ADDITIONS TO FIXED CAPITAL

For Ten Years from Jan. 1, 1914 to Dec. 31, 1923

	Gross Additions	Retirements	Net Additions
1914 - Year Ending Dec. 31st	$ -	$ -	$ -
1915 - " " " "	476	-	476
1916 - " " " "	918	-	918
1917 - " " " "	4,227	-	4,227
1918 - " " " "	332	-	332
1919 - " " " "	-	-	-
1920 - " " " "	-	-	-
1921 - " " " "	-	-	-
1922 - " " " "	-	-	-
1923 - " " " "	2,853	-	2,853
	$ 8,786	$ -	$ 8,786

2

HASKINS & SELLS

Certified Public Accountants

Baltimore.

October 19, 1920.

The United Railways and Electric Company
of Baltimore,

Baltimore, Md.

Dear Sirs:-

Pursuant to engagement, we have made an examination of the Extraordinary Expenditures Account carried on the books of your Company for the period from January 1, 1904, to December 31, 1911, with a view to distinguishing between capital and operating and maintenance charges thereto.

As a result of our examination we find that the following capital items were charged to Extraordinary Expenditures Account during the period above mentioned:

Pratt Street Power House	$ 811,107.16
Other Power Houses	1,544.14
Sub-stations	114,862.55
Consulting Engineer - Salaries & Expenses	6,312.10
Overhead and New Feeders	98,196.00
Distribution Feeders - Low Tension	172,472.06
Cars and Equipment	1,268,890.00
Construction Loan Interest	199,990.87
Track Welding, Bonding, Extension, Reconstruction, etc.	782,321.88
Car Barns and Waiting Stations	128,021.83
Owings Mills Trouble Station, etc.	3,356.60
Bridge Construction and Additions	79,880.31
Track Changes:	
To City Grade	270,323.87
To County Grade	10,009.10
Required by State Roads Commission	52,893.63
Fire Underwriters Requirements	15,816.65
Total	$4,015,998.75

Included in the item of Track Welding, Bonding, Extension, Reconstruction, etc. - $782,321.88, are charges aggregating $ 247,133.15 covering the cost of increased ballast and increased weight of rails, which charges are based upon estimates furnished by your chief engineer's office.

The following journal entry is submitted to properly record the transfer of the above mentioned capital charges:

Road and Equipment	4,015,998.75	
To Profit and Loss Surplus		4,015,998.75

To charge Road and Equipment with certain capital expenditures charged to Extraordinary Expenditures Account during the period from January 1, 1904, to December 31, 1911, as follows:

(Insert summary as listed hereinbefore)

The following journal entry is submitted to record the writing off of the Unadjusted Debit carried on your books as "Maryland Trust Company, Trustee - Income Bond Coupons":

Profit & Loss Surplus	3,920,000.00	
To Maryland Trust Company, Trustee,- Income Bond Coupons -		3,920,000.00

To write off to Profit & Loss Surplus the Unadjusted Debit of Income Bond Coupons fundable under Agreement dated July 25, 1906.

Yours truly,

(Signed) Haskins & Sells.

NOTE: Authority for Entries: Resolution of Executive Committee October 20,1920

Feb. 6, 1925.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

MEMO. RE:

Fifty (50) Semi Convertible Cars, leased from the United States Shipping Board Emergency Fleet Corporation by The United Railways and Electric Co. of Baltimore, as per agreement of July 10, 1918, at an annual rental of 8% on cost of $822,629.15.

INTEREST (A/C 217)

1919	$ 28,993.73	
1920	41,131.46	
1921	41,131.46	
1922	41,131.46	
	$152,388.11	
1923	30,848.59	Credit to P. & L. for set up from April to December 1922 - not claimed
	$121,539.52	

Jan. 16, 1923 - Under agreement of compromise and release, dated Jan. 16, 1925, title to the fifty cars was placed in a third party, John T. Staub, the consideration being $508,000.00

INTEREST (A/C 217) - (JOHN T. STAUB)

1923	$ 29,781.50
1924	5,552.72
	$ 35,334.22

Apr. 25, 1924 - The above cars were acquired from John T. Staub by The Maryland Electric Railways Co. for $508,000.00

Payment was made from proceeds of the issue, First and Refunding Mortgage Gold Bonds, Series "A" 6½%, dated Jan. 1, 1924.

The cars are included with all other property of The Maryland Electric Railways Co. in its lease to The United Railways & Electric Co.

THE UNITED RAILWAYS AND ELECTRIC COMPANY
OF BALTIMORE

(Signed) H. H. Stubbs
Auditor.

Feb. 6, 1925.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

MEMO. RE:

Ten (10) Semi-Convertible Cars, leased from the United States Housing Corporation by The United Railways and Electric Co. of Baltimore, as per agreement of May 21, 1919, at an annual rental of 5% on cost of $139,644.01.

INTEREST (A/C 217)

1919	$4,161.89
1920	6,852.96
1921	6,982.20
1922	6,982.20
1923	6,982.20
1924	2,734.70
	$34,696.15

May 21, 1924 - The above cars were acquired from the United States Housing Corporation by The Maryland Electric Railways Co. for $87,500.00

Payment was made from proceeds of the issue, First and Refunding Mortgage Gold Bonds, Series "A" 6½%, dated Jan. 1, 1924.

The cars are included with all other property of The Maryland Electric Railways Co. in its lease to The United Railways and Electric Co.

THE UNITED RAILWAYS AND ELECTRIC COMPANY
OF BALTIMORE

(Signed) N. E. Stubbs.
Auditor.

U. R. & E. COMPANY EXHIBITS—TEN CENT FARE CASES.

EMERGENCY RATE HEARINGS,

September, 1927.

PERMANENT RATE HEARINGS,

October, 1927.

Exhibit No.	Description	Filed in Evidence
1	Decrease in Passenger Revenue. (First eight months of 1927 compared with first eight months 1926; also compared for May, June, July and August)	9-7-27
1A	Decrease in Passenger Revenue. (First ten months of 1927 compared with first ten months of 1926—October approximate—also comparison for past five months)	10-28-27
2	Comparative Statement of Revenue Passengers. (Years 1920 to 1926 inclusive; year 1927 by months, with August approximated)	9-7-27
2A	Comparative Statement of Revenue Passengers. (Years 1920 to 1926 inclusive; year 1927 by months, with October approximated)	10-28-27
3	Preliminary Results of August, 1927, compared with August, 1926. (Daily Receipts; weather conditions)	9-7-27
3A	(Sheet 1) — Passenger Receipts — Actual Day by Day Comparisons, September, 1927, with September, 1926. (Daily receipts—with chartered cars included—weather conditions and temperature)	10-28-27

3 A	(Sheet 2) — Passenger Receipts — Actual Day by Day Comparisons, October, 1927, with October, 1926. (Daily receipts—with chartered cars included—weather conditions and temperature)	10-28-27
4	Receipts—Cash Receipts for months of July and August, 1927-1926	9-7-27
5	Chart showing Comparison of Monthly Net Income for 1927, with Average Monthly Net Income for seven years, 1920 to 1926, inclusive, also highest and lowest Net Income for each month of those years. (Month of August, 1927, estimated)	9-7-27
6	Income Account, Return Received and Rate of Return—1920-1926. (Sheets "A," "B" and Supplementary)	9-7-27
6 C	Income Account, Return Received and Rate of Return, Years 1920 to 1926. (Rate Base, Years 1920 to 1923, Inclusive, is at Midyear Average for Respective Years as Adjusted on $77,000,000 Valuation by Book Additions and Book Retirements). (Rate Base, Years 1924 to 1926 Inclusive is at Midyear Average for Respective Years as Adjusted on $77,000,000 Valuation by Book Additions and Valuation Retirements)	10-28-27
7	("A"—Estimate of Income for 1927) ("B"—Estimate of Revenue Passengers and Passenger Return for 1927)	9-7-27
7 C	Estimate of Income for Year 1927. (First nine months actual and revised by increasing operating expenses $180,000, and taxes $56,250; Last three months estimated on basis of last three months 1926)	10-28-27

8	Annual Shortages in Net Income—1924-1927, last 5 mos. est. (In 1924 Fare Case, the Commission fixed fares which it estimated would produce a net income for the year 1924 amounting to $1,182,-142.—"This would make the Gross Income of the Company approximately one and one-third times its fixed charges."—Exhibit shows that Commission's estimate for 1924 was not realized in 1924, 1925 and 1926, and under present fares will not be realized in 1927)	9-7-27
8A	Annual Shortages in Net Income. (Exhibit No. 8 revised by changing estimate of net income for year 1927 as shown on Exhibit No. 7C)	10-28-27
9	Amount of Net Income—1920-1926	9-7-27
10	Amount of Gross Income—1920-1926	9-7-27
11	Chart: Revenue Passengers, Population, Automobile Licenses—From 1900 (Showing actual curve and Mr. Tingley's estimate)	9-7-27
12	(Total Passengers — Short City Lines and Long City lines) (Car Miles — Short City Lines and Long City Lines). (2 sheets—Curve and Statistics)	9-7-27
13	Estimated Losses Due to Zone Extensions in June, 1924—12 months' period, June 1, 1924, to May 31, 1925. (3 sheets)	9-7-27
14	Comparative Statement of Earnings and Expenses. Year 1926 compared with 1923	9-7-27
15	Motormen and Conductors' Wages. 1913 to 1927	9-7-27
16	Wage Rates. 1913 to 1927; Power, Track Shops Depts.	9-7-27

17 Comparison Operating Costs, Various Companies, 1926. (Fare Rate) (Chicago, Philadelphia, Boston, Pittsburgh, St. Louis, Cleveland, BALTIMORE, Washington) 9-7-27

18 Average Fare Paid in Large Eastern Cities; Population Serves. (New York, Chicago, Philadelphia, Detroit, Pittsburgh, Boston, St. Louis, Cleveland, BALTIMORE) 9-7-27

19 Estimated Revenue Passengers, Operating Expenses and Net Income for the year 1926, on the basis of 4 tokens for 25 cents instead of 2 for 15c, and on the hypothesis that the increase in revenue passengers would be adequate to maintain gross receipts at the same level..... 9-8-27

20 Comparison of Cost of Living with Car Fares and Wages in Baltimore. (PEOPLE'S COUNSEL EXHIBIT No. 8, showing U. S. Bureau of Labor All Commodities, Retail Food Costs, Wages of Platform Men and Average Fares. *UR&ECO. Operating Expenses per Car Mile added* 9-13-27

21 Retail and Wholesale Trade of Baltimore, Maryland. A detailed report on Sales, Merchandise Outlets, Number of Establishments, Employes, Wages and Inventories. Based on a Census of Distribution Conducted by The U. S. Bureau of the Census 9-13-27

22 Estimates of Income for Year 1928 at Present Rates of Fare Based on Estimated Statement of Income for 1927; With Revenue Decreased, 0% to 5%, and Adjustment of Operating Expenses and Increases in Wages and Power Costs.....10-28-27

23 Addition to and retirement from the valuation of January 1, 1924. (Summary of retirements for years 1924, 1925 and 1926, of property at valuation prices without general overheads of any kind. Also figures used for arriving at rate base as shown on Exhibit 6C for years 1924, 1925 and 1926)..... 10-28-27

24 Estimate of Net Income, Adult Fare 10c, Commutation Rates Increased 33⅓% and half fare to 5c; School Tickets 5c (unchanged) 10-28-27

25 Reserve for Retirements and Replacements (Report on amount needed to be set aside each year for retirements and replacements of physical property)..... 11-1-27

26 Chart showing Comparison of Daily Averages of Revenue Passengers and Change in Rates of Fare for Baltimore, St. Louis and Cleveland 11-29-27

26 A Chart showing trend of Revenue Passengers and Changes in Rates of Fare for Twin City Rapid Transit Company..11-29-27

26 B Chart showing trend of Revenue Passengers and Changes in Rates of Fare for Birmington Ry., Lt. & Power Co.....11-29-27

26 C Chart showing trend of Revenue Passengers and Changes in Rates of Fare for Oklahoma Ry. Co. and Androscoggin & Kennebec Ry. Co.....11-29-27

26 D Chart showing trend of Revenue Passengers and Changes in Rates of Fare for Dallas Ry. Terminal Co. and Nashville Ry. & Lt. Co.....11-29-27

27 (1) Charles Street Bus Line. Chart showing trend of Revenue Passengers and changes in Rates of Fare.....11-29-27

27 (2) Mt. Royal Avenue Bus Line. Chart showing trend of Revenue Passengers in 10c Fare 11-29-27

27 A Number of Passengers carried on Charles Street Bus Line. Statistics of Revenue Passengers and Fare Rates 11-29-27

27 B Number of Passengers carried on the Mt. Royal Avenue Bus Line. Statistics since inauguration of Bus Line July 15, 1922. Fare 10c 11-29-27

28 (1) No. 23, No. 26 car lines, City Section. Trend of Revenue Passengers, Fare 7½c for years 1925, 1926 and 1927 11-29-27

(2) Fayette Street Blue Line. Revenue Passengers. Chart showing trend of Revenue Passengers, Fare 7c, Years 1925, 1926 and 1927 11-29-27

29 Chart showing Indices and U. R. & E. costs. Graph showing curves from 1913 to 1927 (approx.) U. S. B. L. all commodities wholesale; U. S. B. L. Cost of Living in Baltimore; Platform wages—maximum hours; Operating Expenses Per C. M.; Average Fare 11-29-27

30 Gallons of Motor Vehicle Fuel Oil sold or used in the State of Maryland; as computed from receipts into the Treasury of Maryland from the Motor Vehicle Fuel Tax 11-29-27

31 Statement showing the Cost of Financing by the United Railways and Electric Company and its subsidiaries for the Years 1920-1927 inclusive 11-30-27

32 Passenger Receipts in Actual Day to Day Comparisons, November, 1927, with November, 1926 (Including chartered cars) 11-30-27

33 Chart showing Dwelling Permits Issued During the Years 1925, 1926 and 1927 11-30-27

EXHIBIT NO. 1

(1)

THE UNITED RAILWAYS AND ELECTRIC CO. OF BALTIMORE

DECREASE IN PASSENGER REVENUE

First Eight (8) Months of 1927 Compared with First Eight (8) Months of 1926, Also Comparison For the Past Four Months (May, June, July and August). (August 1927 is Approximately Correct).

	1927	1926	Increase	Decrease	%
January	1,387,106	1,386,691	412		.03
February	1,253,081	1,276,416		23,334	1.83
March	1,403,725	1,443,684		39,959	2.77
April	1,381,007	1,403,834		22,827	1.63
May	1,384,528	1,445,118		60,590	4.20
June	1,313,602	1,361,156		47,554	3.49
July	1,250,469	1,310,138		59,669	4.55
	9,373,515	9,627,036		253,521	2.63
August (Approx.)	1,231,428	1,271,236		39,808	3.13
	10,604,943	10,898,272		293,329	2.69

COMPARISON FOR MAY, JUNE, JULY AND AUGUST

	1927	1926	Increase	Decrease	%
May	1,384,528	1,446,118		60,590	4.20
June	1,313,602	1,361,156		47,554	3.49
July	1,250,469	1,310,138		59,669	4.55
August (Approx.)	1,231,428	1,271,236		39,808	3.13
	5,180,027	5,387,648		207,621	3.85

EXHIBIT NO. 11 71
1-a

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

DECREASE IN PASSENGER REVENUE

First Ten Months of 1927 Compared with First Ten Months of 1926 (October Approx.)
Also Comparison For The Past Five Months.

	1927	1926	Increase	Decrease	%
January	1,387,103	1,386,691	412		.03
February	1,255,081	1,278,415		23,334	1.83
March	1,403,725	1,443,684		39,959	2.77
April	1,381,007	1,403,834		22,827	1.63
May	1,384,528	1,445,118		60,590	4.20
June	1,313,602	1,361,156		47,554	3.49
July	1,250,469	1,310,138		59,669	4.55
August	1,231,426	1,271,236		39,810	3.13
September	1,273,685	1,315,996		42,311	3.21
	11,878,626	12,214,268		335,642	2.75
Oct. (Approx.)	1,374,400	1,419,956		45,556	3.21
	13,253,026	13,634,224		381,198	2.80

COMPARISON FOR LAST FIVE MONTHS

	1927	1926	Increase	Decrease	%
May	1,384,528	1,445,118		60,590	4.20
June	1,313,602	1,361,156		47,554	3.49
July	1,250,469	1,310,138		59,669	4.55
August	1,231,426	1,271,236		39,810	3.13
September	1,273,685	1,315,996		42,311	3.21
	6,453,710	6,703,644		249,934	3.73

EXHIBIT NO. 2

THE UNITED RAILWAYS & ELECTRIC COMPANY OF BALTIMORE

COMPARATIVE STATEMENT OF REVENUE PASSENGERS

3

Year		Revenue Passengers	Compared with Next Preceding Year: Increase Number	Increase Percentage	Decrease Number	Decrease Percentage
1920		253,934,179				
1921		238,090,980			15,843,199	6.24%
1922		233,732,146			4,358,834	1.83%
1923		238,658,380	4,926,234	2.11%		
1924		228,423,774			10,234,606	4.29%
1925		224,235,527			4,188,247	1.83%
1926		225,255,633	1,020,106	.45%		
			Net Decrease		28,678,546	11.29%
1927	January	19,012,646	60,324	.32%		
	February	17,177,034			281,759	1.61%
	March	19,264,995			495,445	2.51%
	April	18,925,630			267,664	1.39%
	May	19,001,550			777,440	3.93%
	June	17,969,391			602,024	3.24%
	July	17,100,120			749,810	4.20%
		123,451,366	Net Decrease		3,113,818	2.37%
1927	August (Approx.)	16,805,394			499,951	2.89%
		145,256,760	Net Decrease		3,613,769	2.43%

These figures are in Red Ink

EX-2

EXHIBIT NO. —

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

COMPARATIVE STATEMENT OF REVENUE PASSENGERS

Compared with next preceding year.

Year	Revenue Passengers	Increase Number	Increase Percentage	Decrease Number	Decrease Percentage
1920	253,934,179				
1921	238,090,980			15,843,199	6.24%
1922	233,732,146			4,358,834	1.83%
1923	238,658,380	4,926,234	2.11%		
1924	228,423,774			10,234,606	4.29%
1925	224,235,527			4,188,247	1.83%
1926	225,255,633	1,020,106	.45%		
		Net Decrease		28,678,546	11.29%
1927 January	19,012,648	60,324	.32%		
February	17,177,034			281,759	1.61%
March	19,204,995			495,445	2.51%
April	18,925,630			267,664	1.39%
May	19,001,550			777,140	3.93%
June	17,969,391			602,024	3.24%
July	17,100,120			749,810	4.20%
August	16,805,394			499,951	2.89%
September	17,479,074			488,732	2.72%
	182,735,934	Net Decrease		4,102,501	2.46%
1927 October (Approx.)	18,868,800	Net Decrease		564,971	2.91%
	181,604,634	Net Decrease		4,667,472	2.51%

THE UNITED RAILWAYS & ELECTRIC COMPANY OF BALTIMORE

PRELIMINARY

RESULTS OF AUGUST 1927 vs. 1926

(60)

	1927					1926							PERCENT	
DAY	DATE	RECEIPTS	WEATHER AM	WEATHER PM	TEMP. Mx.	TEMP. Mn.	DATE	RECEIPTS	WEATHER AM	WEATHER PM	TEMP Mx	TEMP Mn	INC.	DEC.	INC.	DEC.
Monday	Aug. 1	$ 42,439	Cl.	- R	79	67	Aug.2	$44,954	PCl.	- C	93	- 75		$2515		5.6
Tuesday	" 2	42,993	C	-Cl	84	66	" 3	42,431	C	-Cl	96	- 77	562		1.3	
Wednesday	" 3	42,422	Cl.	- R	70	61	" 4	43,622	C	- C	92	- 78		1200		2.8
Thursday	" 4	41,960	Cl.	- C	78	60	" 5	43,932	C	Cl	89	- 72		1972		4.5
Friday	" 5	41,758	C	- C	86	66	" 6	43,024	Cl	- C	84	- 71		1266		2.9
Saturday	" 6	45,097	PCl	-PCl	82	64	" 7	47,349	Cl	- C	91	- 75		2252		4.8
Sunday	" 7	28,295	C	- Cl.	91	67	" 8	33,480	C	- C	87	-69		5185		15.5
Monday	" 8	41,793	Cl	- R	87	71	" 9	45,179	C	C	87	- 67		3386		7.5
Tuesday	" 9	41,255	Cl	- C	87	72	" 10	43,970	C	C	88	- 70		2715		6.2
Wednesday	" 10	42,926	PCl	-PCl	77	60	" 11	42,711	C	C	98	- 74	215		.5	
Thursday	" 11	40,754	Cl	- Cl	77	59	" 12	40,802	PCl.	-PCl	97	- 79		48		.1
Friday	" 12	40,825	Cl	- Cl	79	68	" 13	40,907	PCl	- R	95	-75		82		.2
Saturday	" 13	44,538	C	- C	82	66	" 14	44,632	C	- R	98	- 73		94		.2
Sunday	" 14	21,849	R	- R	78	70	" 15	27,611	Cl.	- R	77	- 72		5762		20.9
Monday	" 15	44,225	C	- C	80	68	" 16	43,790	R	- Cl.	90	- 72	435		1.0	
Tuesday	" 16	41,433	PCl.	- C	79	60	" 17	42,319	Cl.	- R	84	- 73		886		2.1
Wednesday	" 17	41,550	Cl.	-Cl.	87	66	" 18	39,154	R	R	74	- 68	2396		6.1	
Thursday	" 18	38,412	Cl.	- R	76	61	" 19	40,945	R	- R	70	- 64		2533		6.2
Friday	" 19	41,313	Cl.	-Cl	76	61	" 20	41,775	Cl	- R	67	- 63		462		1.1
Saturday	" 20	43,768	Cl.	-Cl.	74	64	" 21	43,957	R	- R	63	- 60		189		.4
Sunday	" 21	28,380	C	- C	80	63	" 22	23,897	Cl	- Cl	71	- 60	4483		18.8	
Monday	" 22	42,541	Cl	-Cl	80	65	" 23	45,748	Cl.	- Cl	78	- 66		3207		7.0
Tuesday	" 23	39,821	Cl.	-Cl	84	71	" 24	41,946	Cl	- R	78	- 68		2125		5.1
Wednesday	" 24	41,332	C	- C	77	65	" 25	40,779	Cl	- R	72	- 68	553		1.4	
Thursday	" 25	40,705	PCl	-PCl	73	55	" 26	43,692	C	- C	81	- 64		2987		6.8
Friday	" 26	39,912	R	- R	69	58	" 27	43,286	C	- C	88	- 65		3374		7.8
Saturday	" 27	43,234	Cl	-Cl	65	56	" 28	48,373	C	- C	88	- 67		5139		10.6
Sunday	" 28	20,326	R	R	67	60	" 29	30,897	C	- C	92	- 68		10571		34.2
Monday	" 29	43,915	Cl	- C	76	60	" 30	44,954	C	- C	86	-74		1039		2.3
Tuesday	" 30	42,289	C	- C	83	59	" 31	44,842	C	- C	82	- 63		2553		5.7
Wednesday	" 31	41,658	C	-PCl-R	79	65	Sep. 1	45,245	C	- C	82	- 60		3587		7.9
		$ 1,233,718						$ 1,289,603						$ 55885		4.33

EXHIBIT NO. 2

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

PASSENGER RECEIPTS - ACTUAL DAY BY DAY COMPARISONS - SEPTEMBER 1927 WITH SEPTEMBER 1926.

(INCLUDING CHARTERED CARS).

Day	DATE 1927	DATE 1926	PASSENGER RECEIPTS 1927	PASSENGER RECEIPTS 1926	Increase	Decrease	Per Cent Ins.	Per Cent Dec.	WEATHER 1927 AM	WEATHER 1927 PM	WEATHER 1926 AM	WEATHER 1926 PM	TEMPERATURE 1927 AM	TEMPERATURE 1927 PM	TEMPERATURE 1926 AM	TEMPERATURE 1926 PM
Thursday	September 1	September 2	$41,813	$43,049	$	$ 1,236		2.87	Cl	Cl	Cl	R	77	66	67	65
Friday	" 2	" 3	42,366	44,219		1,853		4.19	Cl	C	Cl	Cl	83	65	73	60
Saturday	" 3	" 4	47,469	50,050		2,581		5.16	Cl	C	Cl	Cl	86	65	67	64
Sunday	" 4	" 5	28,246	25,770	(R) 2,476		9.61		C	C	Cl	R	86	67	74	65
Monday	" 5	" 6	36,148	35,433	715		2.02		C	C	C	C	80	62	90	72
Tuesday	" 6	" 7	45,083	48,116		3,033		6.30	C	C	C	C	81	60	83	70
Wednesday	" 7	" 8	44,120	46,457		2,337		5.03	C	C	C	C	89	63	80	61
Thursday	" 8	" 9	42,477	40,920	(H) 1,557		3.80		R	Cl	PCl	R	77	70	88	70
Friday	" 9	" 10	43,589	44,664		1,075		2.41	Cl	Cl	C	C	74	63	74	64
Saturday	" 10	" 11	48,449	52,260		3,811		7.29	Cl	Cl	C	C	76	65	74	56
Sunday	" 11	" 12	28,083	30,353		2,270		7.47	Cl	Cl	C	C	87	69	82	53
Monday	" 12	" 13	47,972	48,322		350		.72	C	C	Cl	C	76	59	79	64
Tuesday	" 13	" 14	44,462	46,933		2,471		5.26	Cl	C	Cl	C	82	56	71	57
Wednesday	" 14	" 15	43,704	46,574		2,870		6.16	Cl	C	C	C	81	59	73	59
Thursday	" 15	" 16	42,918	46,659		3,741		8.02	C	Cl	C	C	97	67	84	60
Friday	" 16	" 17	42,781	45,527		2,746		6.03	PCl	C	C	Cl	84	70	80	68
Saturday	" 17	" 18	48,730	48,800		70		.14	Cl	C	PCl	PCl	80	65	70	64
Sunday	" 18	" 19	26,191	28,485		2,294		8.05	PCl	Cl	Cl	C	85	68	76	63
Monday	" 19	" 20	47,655	48,496		841		1.73	Cl	R	C	Cl	77	62	86	61
Tuesday	" 20	" 21	45,418	46,888		1,470		3.14	C	C	C	C	74	56	80	65
Wednesday	" 21	" 22	44,916	46,268		1,352		2.92	PCl	C	C	Cl	70	57	77	66
Thursday	" 22	" 23	44,346	45,720		1,374		3.01	C	Cl	Cl	R	72	51	82	66
Friday	" 23	" 24	44,411	45,209		798		1.76	C	C	Cl	R	70	52	90	72
Saturday	" 24	" 25	50,246	50,695		449		.89	C	C	Cl	R	70	50	92	73
Sunday	" 25	" 26	27,861	29,070		1,209		4.16	C	C	C	C	74	48	63	54
Monday	" 26	" 27	47,086	49,032		1,946		3.97	C	PCl	Cl	R	73	49	60	51
Tuesday	" 27	" 28	42,303	45,737		(H) 3,234		7.07	C	C	R	R	78	53	61	56
Wednesday	" 28	" 29	44,566	47,323		2,757		5.83	Cl	PCl	R	R	73	59	62	55
Thursday	" 29	" 30	46,120	46,485		365		.79	Cl	C	R	R	83	64	64	58
Friday	" 30	October 1	46,445	47,616		1,171		2.46	C	C	Cl	Cl	86	65	69	60
					$ 4,748	$ 49,704										
Month (Day by Day)			$1,276,174	$1,321,130		$ 44,956		3.40								
Month			$1,276,174	$1,318,759		$ 42,585		3.23								

(H) Special and Holidays

	1927	1926
Labor Day	5th	6th
Hebrew New Year	27th	9th
Fleet at Ft. McHenry	11th	
Defender's Day	12th	13th
B.& O. Cent. Opening	24th	18th Day of Atonement
" "	25th	
" "	26th	
" "	27th	
" "	28th	
" "	29th	

C -- Clear.
Cl -- Cloudy.
PCl -- Partly Cloudy.
R -- Rain.

EXHIBIT NO.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

PASSENGER RECEIPTS - ACTUAL DAY BY DAY COMPARISONS - OCTOBER 1927 WITH OCTOBER 1926 (25 DAYS)

(INCLUDING CHARTERED CARS).

Day	DATE 1927	DATE 1926	PASSENGER RECEIPTS 1927	PASSENGER RECEIPTS 1926	Increase	Decrease	PER CENT Increase	PER CENT Decrease	WEATHER 1927 AM	WEATHER 1927 PM	WEATHER 1926 AM	WEATHER 1926 PM	TEMPERATURE 1927 AM	TEMPERATURE 1927 PM	TEMPERATURE 1926 AM	TEMPERATURE 1926 PM
Saturday	October 1	October 2	$ 52,433	$ 54,904	$	$ 2,471		4.50	C	C	Cl	C	88	68	77	63
Sunday	" 2	" 3	27,845	30,041		2,196		7.31	C	C	C	C	85	68	86	66
Monday	" 3	" 4	48,979	50,134		1,155		2.30	Cl	R	C	C	80	68	85	67
Tuesday	" 4	" 5	47,409	47,701		292		.61	C	C	C	C	81	64	87	70
Wednesday	" 5	" 6	46,974	48,211		1,237		2.57	C	C	R	C	75	56	74	60
Thursday	" 6	" 7	43,821	48,072		4,251		8.84	C	C	C	C	80	54	63	51
Friday	" 7	" 8	47,008	47,545		537		1.13	C	Cl	C	C	83	61	64	47
Saturday	" 8	" 9	50,298	54,455		4,157		7.63	R	R	C	C	70	56	59	42
Sunday	" 9	" 10	23,604	28,563		4,959		17.36	R	R	C	C	62	48	72	47
Monday	" 10	" 11	49,673	49,556	117		.24		C	C	PCl	PCl	72	50	67	58
Tuesday	" 11	" 12	46,885	47,285		400		.85	C	C	C	C	74	50	68	52
Wednesday	" 12	" 13	43,865	47,624		3,759		7.89	Cl	R	Cl	R	74	63	69	61
Thursday	" 13	" 14	47,752	47,801		49		.10	C	Cl	C	C	70	55	68	56
Friday	" 14	" 15	47,551	48,069		518		1.08	C	C	C	C	61	46	68	54
Saturday	" 15	" 16	54,728	54,759		31		.06	C	C	PCl	PCl	64	46	61	45
Sunday	" 16	" 17	28,532	26,840	1,692		6.30		C	C	R	C	65	43	60	49
Monday	" 17	" 18	48,375	49,711		1,336		2.69	C	R	R	C	61	53	59	44
Tuesday	" 18	" 19	44,228	48,260		4,032		8.35	R	R	C	C	52	48	60	51
Wednesday	" 19	" 20	42,409	47,452		5,043		10.63	R	R	R	C	53	40	55	43
Thursday	" 20	" 21	47,128	48,575		1,447		2.98	R	C	C	C	63	50	57	43
Friday	" 21	" 22	46,856	48,179		1,323		2.75	C	C	C	C	65	51	63	39
Saturday	" 22	" 23	51,661	54,237		2,576		4.75	C	C	R	Cl	70	46	57	49
Sunday	" 23	" 24	26,741	22,388	4,353		19.44		PCl	PCl	Cl	R	65	53	66	49
Monday	" 24	" 25	48,911	50,175		1,264		2.52	C	C	R	C	74	51	66	40
Tuesday	" 25	" 26 (Approx)	46,282	48,673		2,391		4.91	C	C	C	C	67	53	49	36
					6,162	45,424										
25 Days (Day by Day)			$1,109,948	$1,149,210		$39,262		3.42								
25 Days (by Dates)			$1,109,948	$1,148,153		$38,205		3.33								

Holidays and Special Events	1927	1926
P. & O. Cent. Continued	1 to 15th	-
Day of Atonement	6	-
Columbus Day	12	12
Notre Dame-Navy Game - Stadium	15	-
Lindbergh at Stadium	18	-

C - - Clear.
Cl - Cloudy.
PCl - Partly Cloudy.
R - Rain.

EXHIBIT NO.

THE UNITED RAILWAYS & ELECTRIC COMPANY OF BALTIMORE

RECEIPTS

	1927	1926	DECREASE	PERCENT DECREASE
July	# $1,255,727	#$1,315,605	$59,878	4.55%
August	(a) 1,233,718	# 1,273,780	40,062	3.14%
tal for months	$2,489,445	$2,589,385	$99,940	3.86%

Adjusted figures

(a) Preliminary figures

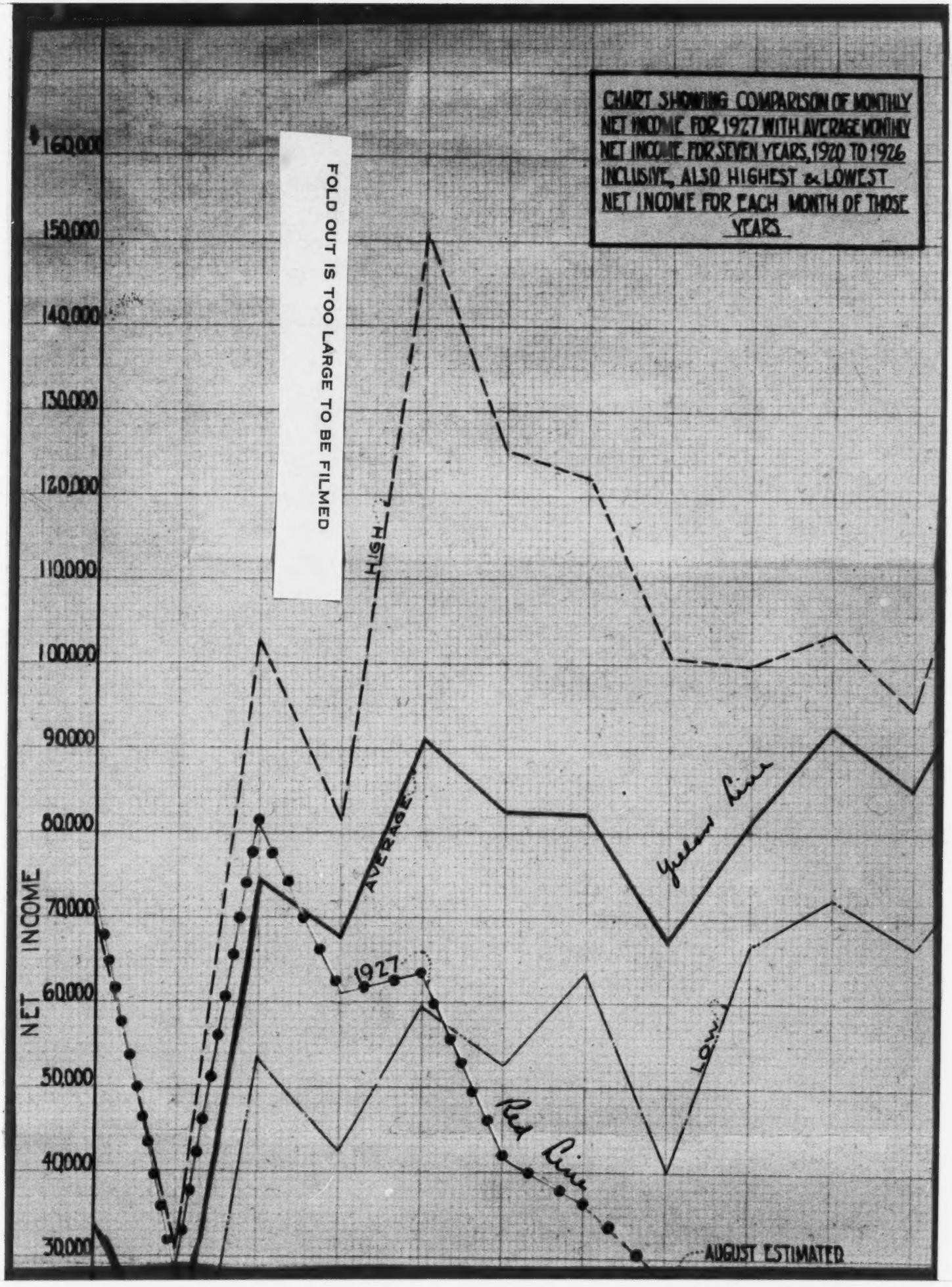


CHART SHOWING COMPARISON OF MONTHLY NET INCOME FOR 1927 WITH AVERAGE MONTHLY NET INCOME FOR SEVEN YEARS, 1920 TO 1926 INCLUSIVE, ALSO HIGHEST & LOWEST NET INCOME FOR EACH MONTH OF THOSE YEARS
FOLD OUT IS TOO LARGE TO BE FILMED
$160,000
150,000
140,000
130,000
120,000
110,000
100,000
90,000
80,000
70,000
60,000
50,000
40,000
30,000
NET INCOME
HIGH
AVERAGE
1927
Yellow line
Low
Red line
AUGUST ESTIMATED

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

SHEET "A".

INCOME ACCOUNT, RETURN RECEIVED AND RATE OF RETURN, YEARS 1920 TO 1926.

OPERATING INCOME :	1920	1921	1922	1923	1924	1925	1926
Revenue from Transportation	$17,196,470.60	$16,197,802.32	$15,962,185.73	$16,281,848.97	$16,294,580.15	$16,481,077.47	$16,572,545.91
" " Other Ry. Operations	117,128.24	135,063.11	160,406.29	179,949.89	158,674.16	140,142.73	144,163.16
Total Operating Revenues	17,313,598.84	16,332,865.43	16,122,592.02	16,461,798.86	16,453,254.31	16,621,220.20	16,715,709.07
OPERATING EXPENSES							
Way and Structures	1,004,746.49	910,423.10	917,893.26	968,244.96	909,911.00	966,995.45	852,531.72
Equipment	1,087,002.13	971,572.50	913,886.83	986,679.56	949,614.77	869,908.51	917,730.83
Power	1,246,142.48	1,115,755.13	1,272,242.02	1,353,290.44	1,328,618.69	1,397,810.05	1,481,386.83
Conducting Transpt.	5,465,492.19	5,408,374.13	4,998,870.02	5,045,084.80	5,189,681.19	5,270,167.19	5,215,053.88
Traffic	12,065.76	36,170.78	15,329.51	9,677.92	*12,558.91	* 4,145.05	4,164.33
General and Miscellaneous	1,649,712.49	1,525,095.47	1,514,699.71	1,433,252.88	1,469,082.93	1,464,987.34	1,528,782.22
Transpt. for Investment - Credit	-	-	*9,245.13	*16,917.90	*19,086.78	*19,973.43	*14,570.31
Depreciation	865,679.94	816,643.27	806,129.60	823,089.94	822,662.72	831,061.04	835,785.46
Total Operating Expenses & Depreciation	11,330,841.48	10,781,974.38	10,429,122.02	10,622,402.60	10,637,925.63	10,776,811.37	10,790,804.97
Net Operating Revenue	5,982,757.36	5,550,891.05	5,693,470.00	5,839,396.26	5,815,328.68	5,844,408.83	5,924,904.10
Taxes	1,839,420.92	1,710,109.29	1,740,512.49	1,800,335.33	1,656,073.68	1,632,366.09	1,672,316.22
Operating Income	4,143,336.44	3,840,781.76	3,952,957.51	4,039,060.93	4,159,255.00	4,212,022.73	4,252,587.88
Non-Operating Income	120,740.63	104,179.29	156,246.22	160,028.82	143,975.98	120,814.99	137,548.81
Gross Income	4,264,077.07	3,944,961.05	4,109,203.73	4,199,089.77	4,303,230.98	4,332,837.74	4,392,136.69
Adjustment of Gross Income to "Fair Return":							
Add P. & L. Operating Credits,	-	-	14,770.96	37,428.37	306,275.49	19,901.16	38,747.98
Add tax refund on Sp. Pt. bonds transferred from taxes to deductions from gross income	2,701.77	2,695.90	2,843.72	2,673.45	3,270.80	3,443.90	3,786.60
Gross Income with Additions	4,266,778.84	3,947,656.95	4,126,820.42	4,239,191.59	4,612,777.27	4,356,382.80	4,434,691.27
Deduct P. & L. operating debits,	-	126,915.84	98,540.64	28,433.93	158,060.07	189,976.42	111,758.51
Deduct following items heretofore reported in deductions from gross income :							
Ground rents and rights of way	4,807.77	5,983.74	4,699.62	4,279.62	5,051.00	4,670.88	3,387.17
Int. on Both. Steel Co. Const. Sp. Pt.	3,124.68	3,124.68	3,124.68	3,124.68	3,124.68	3,124.68	3,308.88
Com. for paying coupon interest	8,069.09	8,330.72	8,331.67	8,223.18	8,873.12	8,846.48	8,899.72
Total deductions	16,001.48	144,354.49	114,576.61	44,061.35	175,108.87	206,638.60	127,293.48
Return Received	4,250,777.36	3,803,322.46	4,012,243.81	4,195,130.24	4,437,668.40	4,149,744.20	4,307,397.79
Rate base at midyear average for respective years, as adjusted on $70,000,000 valuation, (except easements)	72,118,202.41	70,436,208.96	69,067,419.32	69,674,153.68	70,648,353.87	71,824,486.96	72,543,412.48
Rate of Return Received	5.977	5.400	5.809	6.022	6.281	5.778	5.936
Rate base at midyear average for respective years, as adjusted on $77,000,000 valuation,	78,118,202.41	77,436,208.96	76,067,419.32	76,674,153.68	77,648,353.87	78,824,486.96	79,543,412.48
Rate of Return Received	5.441	4.912	5.275	5.472	5.715	5.263	5.415

EXHIBIT NO. ____

SHEET "B"

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

VALUATION (EXCEPT FARMINGTON) $70,000,000 JANUARY 1, 1924, WITH ADJUSTMENTS FOR ACCRUED DOCK ADDITIONS AND RETIREMENTS OF FIXED CAPITAL, AS AVAILABLE, TO SHOW CORPORATE VALUES AT JANUARY 1, 1920, 1921, 1922, 1923, 1924, 1925, 1926 AND 1927, TOGETHER WITH YEARLY CHANGES.

			Road and Equipment	Articulating & Permanently Supplies Cars	Total	
Valuation of Jan. 1, 1924 adjusted to Jan. 1, 1920,			$70,190,518.58	$	$70,190,518.58	- Total at Jan. 1, 1920.
1920 Changes :	Increase in Road and Equipment	$5,986,792.32				
	Less adjustments	*4,051,424.66	1,935,367.66	-	1,935,367.66	- Increase for year 1920.
			72,085,886.24		72,085,886.24	- Total at Jan. 1, 1921.
1921 Changes :	Decrease in Road and Equipment		*3,299,354.56	-	*3,299,354.56	- Decrease for year 1921.
			68,786,531.68	-	68,786,531.68	- Total at Jan. 1, 1922.
1922 Changes :	Increase in Road and Equipment	593,250.50				
	Less adjustment	* 31,474.83	561,775.67	-	561,775.67	- Increase for year 1922.
			69,348,307.35	-	69,348,307.35	- Total at Jan. 1, 1923.
1923 Changes :	Increase in Road and Equipment	688,271.26				
	Less adjustment	* 36,578.61	651,692.65	-	651,692.65	- Increase for year 1923.
			70,000,000.00	-	70,000,000.00	- Total at Jan. 1, 1924.
1924 Changes :	Increase in Road and Equipment	1,824,872.71				
	Less adjustments	*609,143.85	1,215,728.86	80,978.87	1,296,707.73	- Increase for year 1924.
			71,215,728.86	80,978.87	71,296,707.73	- Total at Jan. 1, 1925.
1925 Changes :	Increase in Road and Equipment	689,103.39				
	Plus adjustment	13,139.15	702,240.54	353,337.92	1,055,578.46	- Increase for year 1925.
			71,917,969.40	434,296.79	72,352,266.19	- Total at Jan. 1, 1926.
1926 Changes :	Decrease in Road and Equipment	* 690,938.30				
	Plus Adjustments	845,916.14	154,977.84	231,314.73	386,292.57	- Increase for year 1926.
			72,072,947.24	665,611.52	72,738,558.76	- Total at Jan. 1, 1927.

(* Decrease).

PROOF AND RECONCILIATION

	Valuation (as above) Including Articulating Cars, etc.	Road and Equipment (per books)	
At Jan. 1, 1927,	72,738,558.76	90,394,877.24	
At Jan. 1, 1920,	70,190,518.58	84,608,881.82	Difference
Increase		5,791,995.32	Due to Adjustments as detailed on statement attached
Add Articulating cars, etc. to Road and Equipment (per books)		665,611.52	
Increase - 7 years,	2,588,040.18	6,457,606.84	*3,869,566.66
Increase by Years :			
1920	1,935,367.66	5,986,792.32	*4,051,424.66
1921	*3,299,354.56	*3,299,354.56	-
1922	561,775.67	593,250.50	* 31,474.83
1923	651,692.65	688,271.26	* 36,578.61
1924	1,296,707.73	1,905,851.58	* 609,143.85
1925	1,055,578.46	1,042,439.31	13,139.15
1926	386,292.57	* 459,633.57	845,926.14
	2,588,040.18	6,457,606.84	*3,869,566.66

EXHIBIT NO.

Supplementary to E

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

REVISED STATEMENT OF "RETURN RECEIVED" AND "RATE OF RETURN", YEARS 1920 TO 1926,

AS DETERMINED AFTER DISTRIBUTION OF PROFIT AND LOSS ITEMS TO APPROPRIATE YEARS.

(In Exhibit No.____ Profit And Loss Items Were Shown Under The Year Of Entry On Books.

	1920	1921	1922	1923	1924	1925	
Return Received as shown on Exhibit No.____ Sheet "A"	$ 4,250,777.36	$3,803,322.46	$ 4,012,243.81	$ 4,195,130.24	$ 4,437,668.40	$ 4,149,744.20	$ 4,
Deduct - P. & L. Operating Credits on Exhibit No.____	-	-	14,770.96	37,428.37	306,275.49	19,901.16	
	4,250,777.36	3,803,322.46	3,997,472.85	4,157,701.87	4,131,392.91	4,129,843.04	4,
Add - P. & L. Operating Debits on Exhibit No.____	-	126,915.84	98,540.64	28,433.93	158,060.07	189,976.42	
Return Received before P. & L. adjustments,	4,250,777.36	3,930,238.30	4,096,013.49	4,186,135.80	4,289,452.98	4,319,819.46	4,
Add - P. & L. credits distributed to appropriate years,	78,873.80	64,769.10	113,796.35	116,969.62	2,221.73	19,901.16	
	4,329,651.16	3,995,007.40	4,209,809.84	4,303,105.42	4,291,674.71	4,339,720.62	4,
Deduct - P. & L. debits distributed to appropriate years	10,070.32	159,376.27	155,473.75	140,048.22	104,400.11	27,259.30	
Return Received	4,319,580.84	3,835,631.13	4,054,336.09	4,163,057.20	4,187,274.60	4,312,461.32	4,
Rate base at midyear average for respective years, as adjusted on $70,000,000 valuation (except easements)	71,118,202.41	70,436,208.96	69,067,419.52	69,674,153.68	70,648,353.87	71,824,486.96	72,
Rate of Return Received	6.074	5.446	5.870	5.975	5.927	6.004	
Rate base at midyear average for respective years, as adjusted on $77,000,000 valuation, ...	78,118,202.41	77,436,208.96	76,067,419.52	76,674,153.68	77,648,353.87	78,824,486.96	79,
Rate of Return Received	5.530	4.953	5.330	5.430	5.393	5.471	

EXHIBIT NO._____ 1397

Supplementary to Exhibit No._____

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

REVISED STATEMENT OF "RETURN RECEIVED" AND "RATE OF RETURN", YEARS 1920 TO 1926,

AS DETERMINED AFTER DISTRIBUTION OF PROFIT AND LOSS ITEMS TO APPROPRIATE YEARS.

(In Exhibit No.____ Profit And Loss Items Were Shown Under The Year Of Entry On Books.

	1920	1921	1922	1923	1924	1925	1926
wn on Exhibit No.____ Sheet "A"	$ 4,250,777.36	$3,803,322.46	$ 4,012,243.81	$ 4,195,130.24	$ 4,437,668.40	$ 4,149,744.20	$ 4,307,397.59
ting Credits on Exhibit No._____	-	-	14,770.96	37,428.37	306,275.49	19,901.16	38,747.98
	4,250,777.36	3,803,322.46	3,997,472.85	4,157,701.87	4,131,392.91	4,129,843.04	4,268,649.61
g Debits on Exhibit No._____	-	126,915.84	98,540.64	28,433.93	158,060.07	189,976.42	111,738.51
ved before P. & L. adjustments,	4,250,777.36	3,930,238.30	4,096,013.49	4,186,135.80	4,289,452.98	4,319,819.46	4,380,388.12
distributed to appropriate years,	78,873.80	64,769.10	113,796.35	116,969.62	2,221.73	19,901.16	20,592.20
	4,329,651.16	3,995,007.40	4,209,809.84	4,303,105.42	4,291,674.71	4,339,720.62	4,400,980.32
s distributed to appropriate years	10,070.32	159,376.27	155,473.75	140,048.22	104,400.11	27,259.30	111,776.95
ved	4,319,580.84	3,835,631.13	4,054,336.09	4,163,057.20	4,187,274.60	4,312,461.32	4,289,203.37
verage for respective years, ,000,000 valuation (except easements)	71,118,202.41	70,436,208.96	69,067,419.52	69,674,153.68	70,648,353.87	71,824,486.96	72,545,412.48
d	6.074	5.446	5.870	5.975	5.927	6.004	5.912
verage for respective years, ,000,000 valuation, ...	78,118,202.41	77,436,208.96	76,067,419.52	76,674,153.68	77,648,353.87	78,824,486.96	79,545,412.48
d	5.530	4.953	5.330	5.430	5.393	5.471	5.392

FOLD OUT IS TOO LARGE TO BE FILMED

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

INCOME ACCOUNT, RETURN RECEIVED AND RATE OF RETURN, YEARS 1920 TO 1926.

INCOME STATEMENT	1920	1921	1922	1923	1924	1925
	Rate Base, Years 1920 to 1923 Inclusive, is at Midyear Average for Respective Years As Adjusted on $77,000,000 Valuation By Book Additions And Book Retirements.				Rate Base, Years 1924 to 1926 I[illegible] Midyear Average for Respective [illegible] on $77,000,000 Valuation By Boo[illegible] Valuation Retirements.	
Railway Operating Revenues	$17,313,596.84	$16,332,865.43	$16,122,592.02	$16,461,798.66	$16,453,254.31	$16,621,220.20
Railway Operating Expenses, Depreciation and Taxes	13,170,262.40	12,492,083.67	12,169,634.51	12,422,737.91	12,293,999.31	12,409,197.45
Operating Income	4,143,336.44	3,840,781.76	3,952,957.51	4,039,060.95	4,159,255.00	4,212,022.75
Non-Operating Income	120,740.63	104,179.29	156,246.22	160,028.82	143,975.98	120,814.99
Gross Income	4,264,077.07	3,944,961.05	4,109,203.73	4,199,089.77	4,303,230.98	4,332,837.74
Adjustment of Gross Income to "Fair Return"						
Add P. & L. operating credits	78,873.80	64,769.10	113,796.35	116,969.62	2,221.73	59,954.82
Add tax refund on Sp. Point bonds transferred from taxes to deductions from gross income	2,701.77	2,695.90	2,845.73	2,673.45	3,270.80	3,643.90
Gross Income with Additions	4,345,652.64	4,012,426.05	4,225,845.81	4,318,732.84	4,308,723.51	4,396,436.46
Deduct P. & L. Operating debits	10,070.32	159,376.27	155,473.75	140,048.22	104,400.11	27,259.30
" Int. on Beth. Steel Co. const. (transferred from deductions)	3,124.68	3,124.68	3,124.68	3,124.68	3,124.68	3,124.68
" Com. for paying coupon interest - (transferred from deductions)	8,069.03	8,310.23	8,211.67	8,223.12	8,873.12	8,866.62
" Non-operating income not includible in return	77,543.51	79,450.97	110,818.19	83,706.87	67,745.02	76,125.77
Total Deductions	98,807.54	250,262.15	277,628.29	235,104.89	184,142.93	117,376.37
RETURN RECEIVED	4,246,845.10	3,762,163.90	3,948,217.52	4,083,627.95	4,124,580.58	4,279,060.09
RATE BASE at midyear average for respective years as adjusted on $77,000,000 valuation :						
1920-1923 - by book additions and book retirements	78,118,202.00	77,436,209.00	76,067,420.00	76,674,154.00	-	-
1924-1926 - " " " " valuation "	-	-	-	-	77,416,257.00	77,969,562.00
RATE OF RETURN RECEIVED	5.436	4.858	5.190	5.326	5.328	5.487

RECONCILIATION OF RETURN RECEIVED AS SHOWN ON EXHIBIT NO. 6

(IN EMERGENCY FARE CASE) TO RETURN RECEIVED AS SHOWN ABOVE.

Return received, Exhibit No. 6 (Supplementary).	4,319,580.84	3,835,631.13	4,054,336.09	4,163,057.20	4,187,274.60	4,312,461.32
Adjustments to above :						
[illegible] Ground rents and rights of way	4,807.77	5,983.74	4,699.62	4,279.62	5,051.00	4,670.84

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

ESTIMATE OF INCOME FOR YEAR 1927.

	First 7 Mos. Actual (A) (A)			Last 5 Mos. Estimated (B)		(B)	Year 1927 Est. Without Increase In Fare (A & B)	Year 1927 Estimated With Increase Sept. 15, 1927. (C)
	1st 6 Mos. 1927 (Actual)	July 1927 (Actual)	1st 7 Mos. 1927 (Actual)	Last 5 Mos. 1926 (Actual)		Last 5 Mos. 1927 (Estimated)	Year 1927 (Estimated)	10¢ Adult; 5¢ Half-fare; 5¢ School; Commutation unchanged. Additional 2% Less In Adult & Half-fare Passengers, After 9/15.
Passenger Revenue	$8,123,046	$1,250,469	$9,373,515	$6,856,887 Less 4%, or 274,275 =		$6,582,612	$15,956,127	$17,347,694
Other Revenue	114,501	23,835	138,336	96,836		96,836	235,172	235,396
Total	8,237,547	1,274,304	9,511,851	6,953,723 Decrease 3.94% - -		6,679,448	16,191,299	17,583,090
Operating Expenses	3,009,406	773,382	3,782,788	4,101,707 - Decrease 2% (See below) #		4,259,673	10,042,461	# 10,118,500
Depreciation (5% of Rev.)	411,877	63,735	475,592			333,972	809,564	879,190
Total	3,421,283	837,097	4,258,380			4,593,645	10,852,025	10,997,690
Net Operating Revenue	2,816,264	437,207	3,253,471			2,085,803	5,339,274	6,585,390
Taxes Assignable to Ry. Oper.								
State, City & County	204,000	32,500	236,500 -	(Total for yr.1926 is used for yr.1927)		149,047	385,547	
B. Sp.Pt.& Chas.Ry.Co. Bonds	2,568	133	2,701 -	do		1,085	3,786	
Rental of Subway	42,400	7,100	49,500 -	do		36,287	85,787	
Licenses	4,845	901	5,746 -	do		2,791	8,537	
	253,813	40,634	294,447			189,210	483,657	483,657
Fuel Tax (@ 6.712%)	345,228	81,344	426,572 -	(Computed @ 6.712% of passenger revenue)		444,403	1,070,975	1,164,397
Income Tax	29,000	5,000	34,000 -	(Computed on net income after deduction of $350,000)		* 12,398	21,642	177,316
Total	628,041	126,978	755,019			621,255	1,576,274	1,825,350
Operating Income	1,988,223	310,229	2,298,452			1,464,548	3,763,000	4,760,000
Non-Operating Income	86,252	14,746	101,008 -	(Approximately correct for 1927) - - -		69,992	171,000	171,000
Gross Income	2,074,485	324,975	2,399,460			1,534,540	3,934,000	4,931,000
Deductions	1,727,005	288,605	2,015,610 -	(Approximately correct for 1927) - - -		1,429,370	3,445,000	3,445,000
Net Income	347,480	36,370	383,850			105,150	489,000	1,486,000

(*Decrease).

# Operating Expenses	Last 5 Mos.	Year
Operating Expenses 1st 7 Mos. of 1927, - - - - - - - - - -		3,782,788
Operating Expenses last 5 " " 1926) - 2% Decrease)	4,019,673	4,019,673
Additional power cost for 1927 - - - - -	120,000	120,000
" accident reserve for 1927 - -	120,000	120,000
	4,259,673	10,042,461

## Operating Expenses	Column (C)
Total as itemized for column (A & B)	10,042,461
Wage Increase : 2 cts. per hour, approximately 4% or $260,000 per year, for 3½ months 7/24 of $260,000 = - - - - - - - - - -	76,000
Total	10,118,461
USE	10,118,500

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

ESTIMATES OF REVENUE PASSENGERS AND PASSENGER REVENUE FOR YEAR 1927.

Comparison of Passengers For 1st 7 Mos. - 1926 & 1927.

	Passengers 1st 7 Mos. 1926 (Actual)	Passengers 1st 7 Mos. 1927 (Actual)	Increase or (¢) Decrease	%
Adults @ .08	4,602,284	4,288,839	(¢) 313,445	(¢) 6.81
" .075	118,435,130	115,031,384	(¢)3,403,746	(¢) 2.87
" - Commutation	1,981,447	2,274,916	293,469	14.81
½ Fare @ .04	4,443,700	4,681,859	238,159	5.36
School @ .05	2,102,623	2,174,368	71,745	3.41
	131,565,184	128,451,366	(¢)3,113,818	2.37

Determination of Passenger Classification for Last 5 Months of 1927, to Correspond With Revenue When Decreased 4%.

In passenger column to the right (for last 5 mos. of 1927) the classification is determined as follows : Commutation, half-fare and school tickets are increased as in the first 7 mos. of 1927, i.e., 14.81%, 5.36% and 3.41% respectively. The revenue computed from the fares thus determined amounting to $285,260 is deducted from the total revenue of $6,582,612 for the last 5 mos. of 1927, leaving $6,297,352 which is apportioned to 8¢ and 7½¢ revenue at 3.825% and 96.175% respectively as obtained during the first 7 Mos. of 1927. From the revenue so determined the 8¢ and 7½¢ passengers are determined.

1926 Revenue Passengers (Actual)

		1st 7 Mos.	August	September	October	November	December	Total Last 5 Mos
Adults @ .08		4,602,284	627,487	638,477	691,035	679,172	716,934	3,353,105
" .075		118,435,130	15,763,816	16,211,471	17,390,680	17,020,430	17,921,136	84,307,533
" - Com.		1,981,447	276,616	285,115	315,060	310,322	328,316	1,515,429
½ Fare	.04	4,443,700	612,545	599,520	629,362	614,215	693,030	3,148,672
School	.05	2,102,623	24,881	233,223	407,634	377,568	322,404	1,365,710
		131,565,184	17,305,345	17,967,806	19,433,771	19,001,707	19,981,820	93,690,449

1927 Revenue Passengers (Estimated)

1st 7 Mos. are Actual. Last 5 mos. are 1926 figures adjusted by percentages of increase or decrease shown at top (right) to correspond with 4% decrease in revenue for last 5 months.

Adults @ .08		4,288,839	563,446	573,314	620,508	609,856	643,776	3,010,900
" .075		115,031,384	15,099,214	15,527,995	16,657,489	16,302,849	17,165,519	80,753,066
" - Com.		2,274,916	317,583	327,341	361,720	356,281	376,939	1,739,864
½ Fare	.04	4,681,859	645,377	631,654	663,096	647,137	730,177	3,317,441
School	.05	2,174,368	25,729	241,176	421,534	390,443	333,398	1,412,280
		128,451,366	16,651,349	17,301,480	18,724,347	18,306,566	19,249,809	90,233,551

Effect of change in fare, at Sept. 15/27, on passengers and revenue for 1927.

Adults 8 - 7½ to 10
½ Fare 4 " 5
Commutation and school unchanged
Additional 2% loss in adults & ½ fares from Sept. 15th.

January 1 to September 15, 1927				September 15 to December 31, 1927			
Passengers			Revenue	Passengers			Revenue
5,138,942	@ .08	Adults	$ 411,115	2,117,581	@ .10		$ 211,758
137,894,595	@ .075	"	10,342,095	56,732,058	@ .10		5,673,206
2,756,170	@ .0471	" - Com.	129,816	1,258,610	@ .0471		59,194
5,643,063	@ .04	½ Fare	225,722	2,309,112	@ .05		115,456
2,320,685	@ .05	School	116,034	1,265,963	@ .05		63,298
163,753,455			$11,224,782	63,683,324			$6,122,912

Memo.
Ad
½ F

EXHIBIT NO. ___

SHEET "B" 7-B

1400

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

ESTIMATES OF REVENUE PASSENGERS AND PASSENGER REVENUE FOR YEAR 1927.

Determination of Passenger Classification for Last 5 Months of 1927, to Correspond With Revenue When Decreased 4%.

In passenger column to the right (for last 5 mos. of 1927) the classification is determined as follows : Commutation, half-fare and school tickets are increased as in the first 7 mos. of 1927, i.e., 14.81%, 5.36% and 3.41% respectively. The revenue computed from the fares thus determined amounting to $285,260 is deducted from the total revenue of $6,582,612 for the last 5 mos. of 1927, leaving $6,297,352 which is apportioned to 8¢ and 7½¢ revenue at 3.825% and 96.175% respectively as obtained during the first 7 Mos. of 1927. From the revenue so determined the 8¢ and 7½¢ passengers are determined.

Comparison of Passengers For Last 5 Mos. - 1926 & 1927.

		Passengers Last 5 Mos.1926 (Actual)	Passengers Last 5 Mos. 1927 (Est.)	Increase or (¢) Decrease	%
Adults	@ .08	3,353,105	3,010,900	(¢) 342,205	(¢) 10.206
"	.075	84,307,533	80,753,066	(¢) 3,554,467	(¢) 4.216
" - Com.	.0471	1,515,429	1,739,864	224,435	14.81
½ Fare	.04	3,148,672	3,317,441	168,769	5.36
School	.05	1,365,710	1,412,280	46,570	3.41
		93,690,449	90,233,551	(¢) 3,456,898	(¢) 3.69

ps.	August	September	October	November	December	Total Last 5 Mos.	Total For Year		Revenue
84	627,487	638,477	691,035	679,172	716,934	3,353,105	7,955,389	@ .08	$ 636,431
30	15,763,816	16,211,471	17,390,680	17,020,430	17,921,136	84,307,533	202,742,663	@ .075	15,205,700
47	276,616	285,115	315,060	310,322	328,316	1,515,429	3,496,876	@ .0471	164,680
00	612,545	599,520	629,362	614,215	693,030	3,148,672	7,592,372	@ .04	303,695
23	24,881	233,223	407,634	377,568	322,404	1,365,710	3,468,333	@ .05	173,417
84	17,305,345	17,967,806	19,433,771	19,001,707	19,981,820	93,690,449	225,255,633		$16,483,923
39	563,446	573,314	620,508	609,856	643,776	3,010,900	7,299,739	@ .08	$ 583,979
84	15,099,214	15,527,995	16,657,489	16,302,849	17,165,519	80,753,066	195,784,450	@ .075	14,683,834
16	317,583	327,341	361,720	356,281	376,939	1,739,864	4,014,780	@ .0471	189,010
59	645,377	631,654	663,096	647,137	730,177	3,317,441	7,999,300	@ .04	319,972
68	25,729	241,176	421,534	390,443	333,398	1,412,280	3,586,648	@ .05	179,332
66	16,651,349	17,301,480	18,724,347	18,306,566	19,249,809	90,233,551	218,684,917		$15,956,127 - "A & B"

1 to September 15, 1927			September 15 to December 31, 1927			YEAR 1927	
rs		Revenue	Passengers		Revenue	Passengers	Revenue
42	@ .08	$ 411,116	2,117,581	@ .10	$ 211,758	7,256,523	$ 622,873
95	@ .075	10,342,095	56,732,056	@ .10	5,673,206	194,626,653	16,015,301
70	@ .0471	129,816	1,258,610	@ .0471	59,194	4,014,780	189,010
63	@ .04	225,722	2,309,112	@ .05	115,456	7,952,175	341,178
85	@ .05	116,034	1,265,963	@ .05	63,298	3,586,648	179,332
55		$11,224,782	63,683,324		$6,122,912	217,436,779	$17,347,694 - "C"

Memo. - Effect of Additional 2% Decrease In Passengers After 9/15.

Adults	43,216	@ .08	$ 3,457
"	1,157,797	@ .075	86,835
½ Fares	47,125	@ .04	1,885
	1,248,138		$ 92,177

FOLD OUT IS TOO LARGE TO BE FILMED

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

ESTIMATE OF INCOME FOR YEAR 1927

	First 9 Mos. Actual And Revised			Last 3 Mos. Estimated		
	1st 9 Mos. 1927 (Actual)	Add 9/12 of Additional Expenses	(A) 1st 9 Mos. 1927 (Revised)	Last 3 Mos. 1926 (Actual)		(B) Last 3 1927 (Estim
Passenger Revenue	$11,878,626	$	$11,878,626	$4,269,655	Less 3.21% or 137.055 =	$4,132,
Other Revenue	180,474		180,474	54,409		54,
Total	12,059,100		12,059,100	4,324,064		4,187,
Operating Expenses	7,356,722	180,000	7,536,722	2,537,598	See 1% Decrease & Adjustment	$ 2,572,
Depreciation (5% of Rev.)	602,955		602,955			209,
Total	7,959,677		8,139,677			2,781,
Net Operating Revenue	4,099,423		3,919,423			1,405,
Taxes Assignable to Railway Oper.						
State, City & County	294,047	56,250	350,297	(Estimate of $369,000 and $75,000 for year 1927)		93,
B. Sp. Pt. & C. Ry. bonds	2,981		2,981	(Total for year 1926 is used for year 1927)		
Rental of Subway	63,600		63,600	do		22,
Licenses	7,534		7,534	do		1,
Park Tax (@ 6.7% for year)	368,162		424,412			117,
Income Tax	791,660		791,660	(6.7% of Passenger Revenue for year 1927)		281,
Total Taxes	34,000		34,000	(Computed on Net Income after deduction of $350,000)		* 22,
	1,193,822		1,250,072			376,
Operating Income	2,905,601		2,669,351			1,029,
Non-Operating Income	123,243		123,243	(Approximately correct for year 1927)		47,
Gross Income	3,028,844		2,792,594			1,076,
Deductions	2,585,453		2,585,453	(Approximately correct for year 1927)		859,
Net Income	443,391	* 236,250	207,141			217,

(* Decrease).

$ OPERATING EXPENSES

	1st 9 Mos.	Last 3 Mos.	Year
1st 9 Mos. 1927 Actual	$7,356,722	$ -	$ 7,356,722
Last 3 Mos. 1926 =	-	2,537,598	-
Less 1% decrease	-	25,376	-

PERCENTAGES OF DECREASE IN REVENUE & OPERATING EXPENSES

1927	Passenger Revenue % Decrease	Operating Ex % Increase
May	4.20	
June	3.49	
July	4.55	

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

EXHIBIT NO. 7-C

ESTIMATE OF INCOME FOR YEAR 1927

First 9 Mos. Actual And Revised		(A)	Last 3 Mos. Estimated	(B)	YEAR (A Plus B)
1st 9 Mos. 1927 (Actual)	Add 9/12 of Additional Expenses	1st 9 Mos. 1927 (Revised)	Last 3 Mos. 1926 (Actual)	Last 3 Mos. 1927 (Estimated)	Year 1927 (Estimated)
$11,878,626	$	$11,878,626	$4,269,655 Less 3.21% or 137.055 =	$4,132,600	$16,011,226
180,474		180,474	54,409	54,409	234,883
12,059,100		12,059,100	4,324,064	4,187,009	16,246,109
7,356,722	180,000	7,536,722	2,537,598 See 1% Decrease & Adjustment	$ 2,572,222	10,108,944
602,955		602,955		209,350	812,305
7,959,677		8,139,677		2,781,572	10,921,249
4,099,423		3,919,423		1,405,437	5,324,860
Oper.					
294,047	56,250	350,297	(Estimate of $369,000 and $75,000 for year 1927)	93,703	444,000
2,981		2,981	(Total for year 1926 is used for year 1927)	805	3,786
63,600		63,600	(do)	22,187	85,787
7,534		7,534	(do)	1,003	8,537
368,162		424,412		117,698	542,110
791,660		791,660	(6.7% of Passenger Revenue for year 1927)	281,092	1,072,752
34,000		34,000	(Computed on Net Income after deduction of $350,000)	* 22,390	11,610
1,193,822		1,250,072		376,400	1,626,472
2,905,601		2,669,351		1,029,037	3,698,388
123,243		123,243	(Approximately correct for year 1927)	47,757	171,000
3,028,844		2,792,594		1,076,794	3,869,388
2,585,453		2,585,453	(Approximately correct for year 1927)	859,547	3,445,000
443,391	* 236,250	207,141		217,247	424,388

PERCENTAGES OF DECREASE IN REVENUE & OPERATING EXPENSES

$ OPERATING EXPENSES				Passenger Revenue	Operating Expenses	
1st 9 Mos.	Last 3 Mos.	Year	1927	% Decrease	% Increase	% Decrease
$7,356,722	$ -	$ 7,356,722	May	4.20		1.11
-	2,537,598	-	June	3.49		.37
-	25,376	-	July	4.55		2.40
	2,512,222	2,512,222	August	3.13	.83	

EXHIBIT NO. 8

THE UNITED RAILWAYS & ELECTRIC COMPANY OF BALTIMORE

ANNUAL SHORTAGES IN NET INCOME

	YEAR	NET INCOME	LESS THAN $1,182,142 (Commission's Estimate for Year 1924)
	1924	967,968	$214,174
	1925	980,610	201,532
	1926	1,010,054	172,088
#	1927	489,000	# 693,142
			$1,280,936

These figures are in Red Ink

Note:

1927 - First seven months - actual
- Last five months - estimated

EX-3

8

EXHIBIT NO._____

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

ANNUAL SHORTAGES IN NET INCOME.

Year	Net Income	Less Than 1,182,142. (Commission's Estimate for Year 1924)
1924	967,968	214,174
1925	980,610	201,532
1926	1,010,054	172,088
# 1927	424,388	757,754
		1,345,548

#NOTE:

First nine months - actual.
Last three months - estimated.

1C

THE UNITED RAILWAYS & ELECTRIC COMPANY OF BALTIMORE

AMOUNT OF NET INCOME

	Net Income	Less than minimum of $1,000,000	Less than maxim of $1,500,000
1920	$1,043,599	# $43,599	$456,401
1921	635,231	364,769	864,769
1922	799,269	200,731	700,731
1923	976,266	23,734	523,734
1924	967,968	32,032	532,032
1925	980,610	19,390	519,390
1926	1,010,054	# 10,054	489,946
Total 1920-1926 incl.	$6,412,997	$587,003	$4,087,003

More than minimum

EXHIBIT NO. _____

THE UNITED RAILWAYS & ELECTRIC COMPANY

OF BALTIMORE

AMOUNT OF GROSS INCOME

YEAR	FIXED CHARGES (ACTUAL)	GROSS INCOME (ACTUAL)	GROSS INCOME 1 1/3 FIXED CHARGES (A)	GROSS INCOME 1 1/2 FIXED CHARGES (B)	SHORTAGE IN GROSS INCOME Basis (A)	SHORTAGE IN GROSS INCOME Basis (B)
1920	$3,220,478	$4,264,077	$4,293,971	$4,830,717	$29,894	$566,640
1921	3,309,730	3,944,961	4,412,973	4,964,595	468,012	1,019,634
1922	3,309,935	4,109,204	4,413,246	4,964,903	304,042	855,699
1923	3,222,823	4,199,090	4,297,097	4,834,234	98,007	635,144
1924	3,335,263	4,303,231	4,447,017	5,002,895	143,786	699,664
1925	3,352,228	4,332,838	4,469,638	5,028,342	136,800	695,504
1926	3,382,102	4,392,157	4,509,470	5,073,153	117,313	680,996
		$29,545,558	$30,843,412	$34,698,839	$1,297,854	$5,153,281

EX-10

The United Railways and Elec. Co. OF BALTIMORE

#1

	Revenue Passengers	Population Served (Est)	Automobile Licenses Issued
00	89,912,922	564,000	
01	95 041 347	574 000	
02	101 746 407	584 000	
03	110 235 977	594 000	
04	109 526 906	604 000	
05	122 318 436	614 000	
06	133 785 601	624 000	
07	142 114 935	634 000	
08	136 400 934	643 000	
09	145 601 990	652 000	
10	154 928 785	660 000	
11	161 467 727	668 000	4 400
12	172 233 341	678 000	8 500
13	182 180 767	688 000	10 500
14	185 296 350	703 000	14 200
15	181 744 023	718 000	20 200
16	199 158 285	733 000	27 300
17	212 893 619	748 000	41 200
18	226 834 528	767 000	35 780
19	243 890 966	783 000	63 160
20	253 934 1[illegible]	[illegible]	85 430
21	236 030 980	[illegible]	100 800
22	233 732 14[illegible]	812 000	115 238
23	238 658 380	818 000	140 346
24	228 423 774	825 000	176 141
25	224 235 527	835 000	203 040
26	225 255 633	[illegible]	242 265
			267 64[illegible]

'15 '16 '17 '18 '19 '20 '21 '22 '23 '24 '25 '26 '27 '28 '29

Yellow Line

Curve of actual increase →

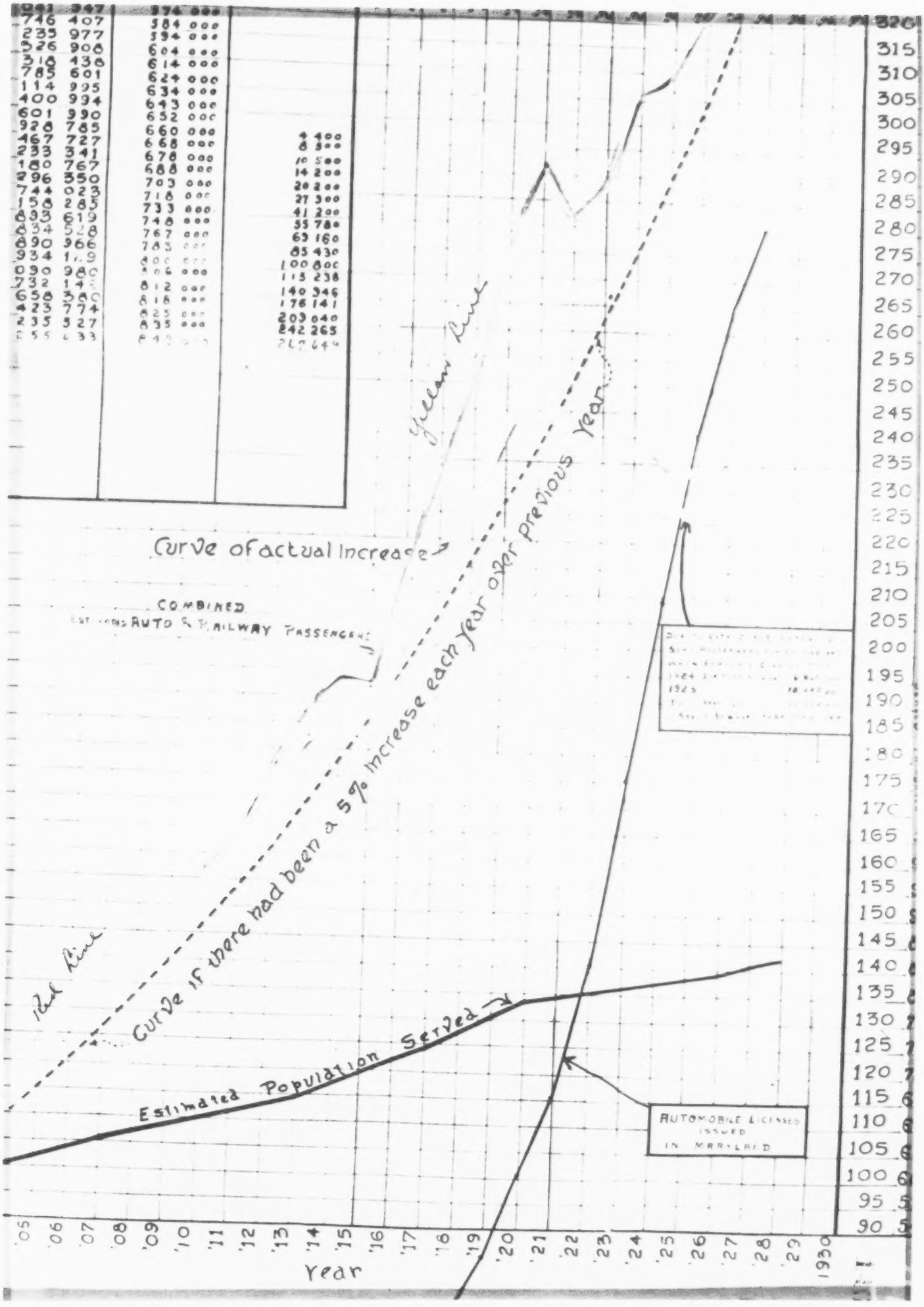
COMBINED
[illegible] AUTO & RAILWAY PASSENGERS

Curve if there had been a 5% increase each year over previous year

Red Line

Population Served →

FOLD OUT IS TOO LARGE TO BE FILMED


Curve of actual Increase
COMBINED
AUTO & RAILWAY PASSENGERS
Yellow Line
Red Line
Curve if there had been a 5% increase each year over previous year
Estimated Population Served
AUTOMOBILE LICENSES ISSUED IN MARYLAND
Year
'05 '06 '07 '08 '09 '10 '11 '12 '13 '14 '15 '16 '17 '18 '19 '20 '21 '22 '23 '24 '25 '26 '27 '28 '29 1930
320 315 310 305 300 295 290 285 280 275 270 265 260 255 250 245 240 235 230 225 220 215 210 205 200 195 190 185 180 175 170 165 160 155 150 145 140 135 130 125 120 115 110 105 100 95 90

THE UNITED RAILWAYS & ELEC. CO.
OF BALTIMORE

NS PASSGRS.
CAR MILES

10 MILLIONS P
MILLIONS CA

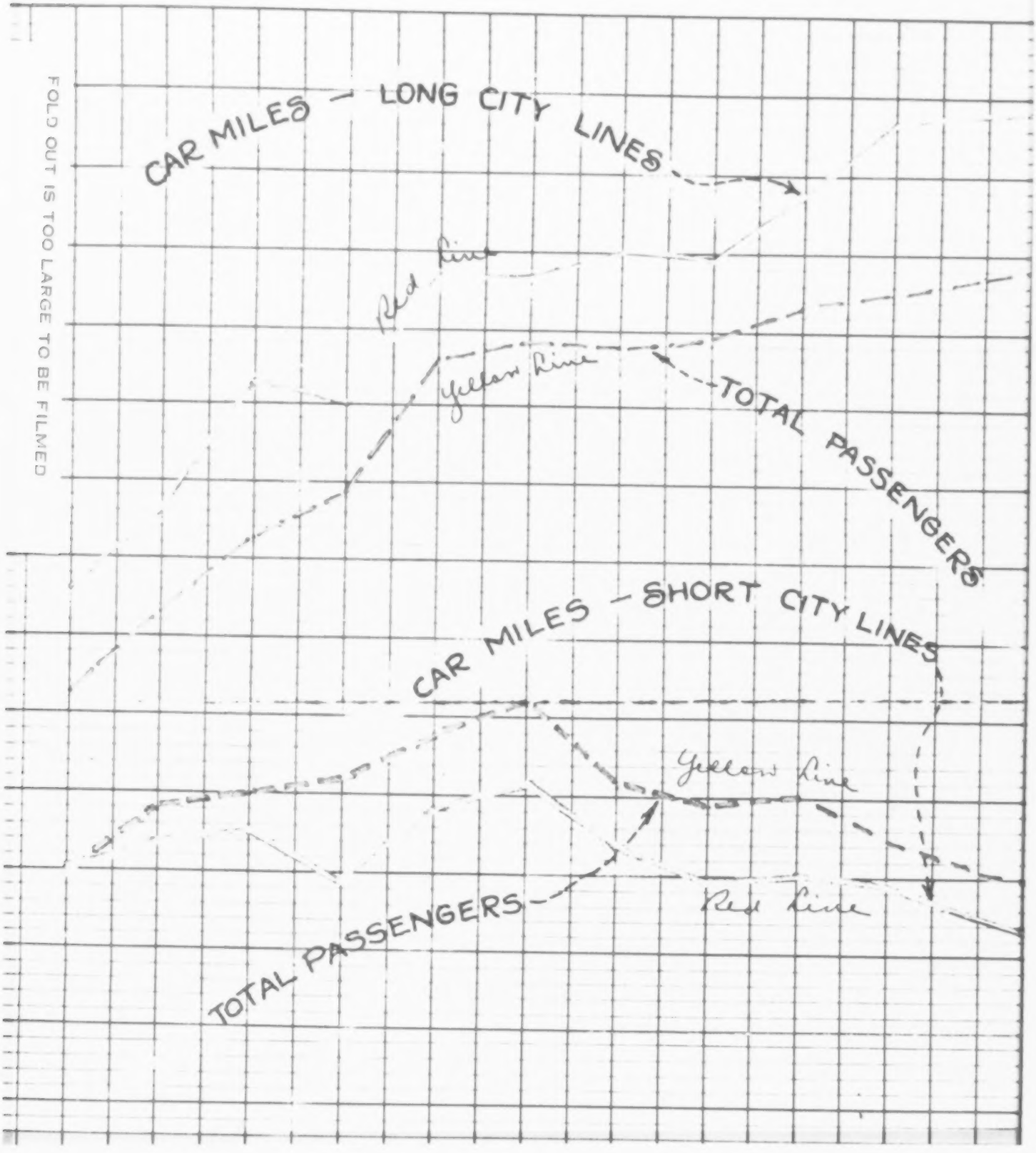


EXHIBIT NO. 12

Study showing the relative changes in Car Miles and in total passengers between Short City Lines and Long City Lines between 1915 and 1926.

	SHORT CITY LINES		LONG CITY LINES	
	CAR MILES	TOTAL PASS.	CAR MILES	TOTAL PASS.
1915	8,992,688	89,878,111	12,590,276	112,680,363
16	9,364,870	97,760,602	13,554,084	123,051,127
17	9,480,421	99,841,212	15,300,027	132,586,332
18	8,893,112	100,895,510	15,044,744	139,045,625
19	9,812,567	107,633,805	16,721,673	155,681,865
20	10,132,138	111,950,432	16,737,383	158,296,980
21	9,305,945	100,774,317	17,084,311	157,647,100
22	8,932,428	98,764,405	16,888,597	156,780,392
23	9,052,367	99,877,112	17,653,106	165,462,688
24	8,881,768	94,620,979	18,657,277	164,537,859
25	8,638,928	90,617,535	18,818,274	167,236,273
26	8,233,735	89,801,048	18,827,913	168,999,526

$\frac{8,233,735}{8,992,688} = 92\%$

$\frac{89,801,048}{89,878,111} = 100\%$

$\frac{18,827,913}{12,590,276} = 150\%$

$\frac{168,999,526}{112,680,363} = 150\%$

Lines included in above figures

#1	Gilmor
2	Carey
12	Westport
16	Madison
18	Pennsylvania
20	Orleans
21	Preston
22	Canton
27	Federal-Columbia Ave.
30	Fremont
	Hudson Street
4	Monument St. W. Hills
5	Pimlico - Pikesville
33	W. Arlington
7	York & Frederick Rds.
8	Towson & Catonsville City
17	St. Paul
29	Roland Park
14	Ten Hills
15	Gay Street
19	Harford
25	Mt. Washington - Key Ave.
31	Garrison Blvd.
32	Woodlawn
10	Roland Pk. Lakeside Riverview
11	Guilford

In the long city lines account was taken of the fact that #5 line ran to West Arlington and included the Pimlico figures formerly, and estimated figures were added to #5 and 33 lines to take care of that fact.

Average length of route to center of city
3.06 Miles 5.88 Miles

23

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

ESTIMATED LOSSES DUE TO ZONE EXTENSIONS IN JUNE 1924

TWELVE MONTHS' PERIOD JUNE 1, 1924 to MAY 31, 1925

REVENUE PASSENGERS

LINES	PREDICTED LOSS %	YEAR PRECEDING ZONE EXTENSIONS	PREDICTED LOSS	ACTUAL LOSS	
Pikesville	25%	1,586,302	371,575	535,451	
Owings Mills	46%	713,002	327,981	176,429	
Emory Grove	25%	559,021	137,005	102,316	
TOTAL		2,858,325	836,561	814,196	
Riverview	95.6%	557,647	532,552	475,015	(A)
Back & Middle River	34.7%	2,852,063	989,665	729,584	
Dundalk	91.4%	4,845,486	4,428,774	4,845,486	
Curtis Bay Transfer	100%	2,060,854	2,060,854	2,060,854	
		13,174,375	8,848,406	8,923,135	
Chester Street Bus				495,000	(B)

(A) Actual loss had to be adjusted because passengers now get transfers to #10 line and therefore the number of transfer passengers has been deducted from the revenue passengers to show local riding.

(B) Chester Street Bus was started to give direct communication from Northeast Baltimore to Southeast Baltimore and the railway lost those passengers as no railway service was cut on account of this new bus line.

PASSENGER RECEIPTS

LINES	PREDICTED LOSS %	YEAR PRECEDING ZONE EXTENSIONS	PREDICTED LOSS		ACTUAL LOSS
Pikesville	28%	$101,170	$25,292		$30,570
Owings Mills	46%	45,893	21,111		10,266
Emory Grove	25%	36,315	9,079		5,625
TOTAL		$183,378	$55,482		$46,461
Riverview	95.5%	36,114	33,534	(A)	28,936
Back & Middle River	34.7%	179,916	62,429		36,168
Dundalk	91.4%	289,600	264,694		289,600
Curtis Bay Transfer	100%	64,039	64,039		64,039
TOTAL		$752,047	$480,178		$465,204
School Children over 12			$100,000		$47,866
Chester Street Bus				(B)	$53,000
Cost of one fare to City Line on Carney Line			19,082		19,082
			$599,260		$585,152

(A) Actual loss had to be adjusted because passengers now get transfers to #10 line and therefore the number of transfer passengers has been deducted from the revenue passengers to show local riding.

(B) Chester Street Bus was started to give direct communication from Northeast Baltimore to Southeast Baltimore and the railway lost those passengers as no railway service was cut on account of this new bus line.

1923 - 24 Total Revenue Passengers	238,575,605
1924 - 25 " " "	223,123,622
Total Loss All Lines	15,451,983
Total Loss on Zone Extension Lines	8,923,135
Loss in Lines without Zone Extensions	6,528,848
Total of all Lines	238,575,605
Total of Zone Extension Lines	13,174,375
Total of lines not affected by zone extensions	225,401,230

$\frac{6,528,848}{225,401,230} = 3\%$

3% of 13,174,375 = 382,000

$\frac{382,000}{8,923,135} = 4.3\%$ Indicated Loss in zone extension lines due to general causes.

$465,204 x 4.3% = $20,000

$585,152
20,000

$565,152 Actual loss due to zones, school children, etc.

EXHIBIT NO

17

THE UNITED RAILWAYS & ELECTRIC COMPANY OF BALTIMORE

COMPARATIVE STATEMENT OF EARNINGS AND EXPENSE

FOLD OUT IS TOO LARGE TO BE FILM

YEAR 1926 COMPARED WITH 1923

	1926	1923	1923 to 1926 Increase	1923 to 1926 Decrease
ING INCOME:				
nue from Transportation	$16,571,545.91	$16,281,848.97	$289,696.94	
nue from Other Railway Operations	144,163.16	179,949.89		35,786.73
Total Operating Income	16,715,709.07	16,461,798.86	253,910.21	
ING EXPENSES:				
tenance of Way and Structures	852,531.72	968,244.96		115,713.24
tenance of Equipment	917,730.83	986,679.56		68,948.73
tenance of Power	38,968.23	40,668.88		1,700.65
Total Maintenance	1,809,230.78	1,995,593.40		186,362.62
eciation	835,785.45	823,089.94	12,695.51	
	2,645,016.23	2,818,683.34		173,667.11
r Service	1,412,358.62	1,312,621.56	99,737.06	
ucting Transportation	5,215,053.88	5,065,084.80	149,969.08	
fic	4,164.33	9,677.92		5,513.59
ral and Miscellaneous	1,526,782.22	1,433,252.88	95,529.34	
portation for Investment - Credit	* 14,570.31	* 16,917.90	2,347.59	
Total Operating Expenses	10,790,804.97	10,622,402.60	168,402.37	
, Licenses, Etc.	1,672,316.22	1,800,335.31		128,019.09
Total Operating Expenses, Taxes, Etc.	12,463,121.19	12,422,737.91	40,383.28	
perating Income	4,252,587.88	4,039,060.95	213,526.93	
perating Income	139,568.81	160,028.82		20,460.01
Gross Income	4,392,156.69	4,199,089.77	193,066.92	
est on Funded Debt	2,093,415.00	2,093,415.00		
Remainder	2,298,741.69	2,105,674.77	193,066.92	
DEDUCTIONS FROM GROSS INCOME:				
t	558,087.95	406,594.61	151,493.34	
rest on Unfunded Debt	64,544.07	70,745.51		6,201.44
rest on Income Bonds	559,080.00	559,080.00		
tization of Discount on Funded Debt	58,994.39	50,376.00	8,618.39	
ellaneous	47,980.87	42,612.27	5,368.60	
Total	1,288,687.28	1,129,408.39	159,278.89	
Net Income (Transferred to P. & L.)	$1,010,054.41	$ 976,266.38	$ 33,788.03	
Miles	1,637,173,845	-		
dles	35,304,583	35,873,841		569,258
nue Passengers	225,255,633	238,658,380		13,402,747
sfer Passengers	93,695,891	92,838,315	857,576	
nue Pass. Per Car Mile	6.3878	6.6527		.2649
tenance Cost Per Car Mile	.0512	.0557		.0045
eciation Per Car Mile	.0237	.0229	.0008	
% TO TOTAL OPERATING INCOME:				
ntenance and Depreciation	15.82%	17.12%		1.30%
rating Expenses and Depreciation	64.55%	64.53%	.02%	
es	10.00%	10.93%		.93%
rating Expenses, Depreciation and Taxes	74.55%	75.46%		.91%

EXH

THE UNITED RAILWAYS & ELECTRIC COMPANY OF BALTIMORE

MOTORMEN & CONDUCTORS' WAGES 1913 - 1927

	Prior to May 1-1913	May 1 1913	1914	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1
Min.	19	20	22	22	24	26	41	45	47	47	45	45	46	47	47	
Max.	22	24	26	26	28	30	45	50	52	52	50	50	51	52	52	

EXHIBIT NO. 15

THE UNITED RAILWAYS & ELECTRIC COMPANY OF BALTIMORE

MOTORMEN & CONDUCTORS' WAGES 1913 - 1927

1913	May 1 1913	1914	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	At 1913 = 100
	20	22	22	24	26	41	45	47	47	45	45	46	47	47	48	253
	24	26	26	28	30	45	50	52	52	50	50	51	52	52	53	241

THE UNITED RAILWAYS & ELECTRIC COMPANY OF BALTIMORE

WAGE RATES 1913 TO 1927

	POWER DEPT. Lines & Cables	1913	1914	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926
3	Foremen	.32½	.35	.36½	.37½	.38½	.40	.50	.63	.65	.63	.63	.64	.65	.65
2	Foremen	.30	.32½	.32½	.30	.30	.35	.45	.54	.56	.54	.54	.55	.56	.56
4	Inspectors	.27½	.27½	.27½	.28	.29	.31	.41	.58	.60	.58	.58	.59	.60	.60
4	Splicers								.60	.62	.60	.60	.61	.62	.62
19	Linemen (1)	.25	.26½	.26½	.28	.30	.35	.50	.55	.57	.55	.55	.56	.57	.57
8	" (2)	---	---	---	---	.29	.32½	.45	.50	.52	.50	.50	.51	.52	.52
29	" (3)	.21	.21	.22	.23½	.25	.28	.41	.45	.47	.45	.45	.46	.47	.47
21	Helpers	.15	.16½	.16½	.17½	.19	.26½	.35	.40	.42	.40	.40	.41	.42	.42
	Power Division			**P E R D A Y**								**P E R H O U R**			
1	Mechanic	---	Monthly Roll						.74	.76	.74	.74	.75	.76	.76
2	"	---	2.50	2.50	2.50	2.65	2.65	5.00	.60	.62	.60	.60	.61	.62	.62
1	"	---	.....						.57	.59	.57	.57	.58	.59	.59
2	"	---	2.35	2.35	2.35	2.50	2.50	4.85	.50	.52	.50	.50	.51	.52	.52
9	"	---	2.00	2.00	2.00	2.15	2.15	4.50	.45	.47	.45	.45	.46	.47	.47
	Sub-Stations														
14	Operators	.30	.32½	.35	.35	.36	.47	.60	.60	.62	.60	.60	.61	.62	.62
8	"	.25	.27½	.30	.30	.31	.42	.55	.55	.57	.55	.55	.56	.57	.57
3	"	.22½	.25	.27½	.29	.29	.41	.52	.54	.56	.54	.54	.55	.56	.56
2	"	---	.22½	.25	.26	.26	.40	.50	.53	.55	.53	.53	.54	.55	.55
3	"	.17½	.17½	.18½	.21	.21	.28	.35	.48	.50	.48	.48	.49	.50	.50
11	"	---	---	---	---	---	---	---	.45	.47	.45	.45	.46	.47	.47
8	"	---	---	---	---	---	---	---	.41	.43	.41	.41	.42	.43	.43
3	Auto. S.S. Maintainers	---	---	---	---	---	---	---	---	---	---	---	---	.62	.64
	Owings Mills Power House						**P E R D A Y**				(12 HOURS)				
1	Engineer	2.75	2.75	2.75	2.75	2.90	3.15	6.00	6.60	6.84	6.60	6.60	6.72	6.84	6.84
3	Firemen	2.50	2.50	2.50	2.50	2.65	2.90	4.60	6.00	6.24	6.00	6.00	6.12	6.24	6.24
2	Oilers	1.85	1.85	1.85	1.85	2.00	2.25	3.80	4.92	5.16	4.92	4.92	5.04	5.16	5.16
2	Coal Passers	1.75	1.75	1.75	1.75	1.85	2.10	3.60	4.68	4.92	4.68	4.68	4.80	4.92	4.92

THE UNITED RAILWAYS & ELECTRIC COMPANY OF BALTIMORE

WAGE RATES 1913 TO 1927

1913	1914	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	At 1913 = 100
.22½	.35	.36½	.37½	.3[illegible]½	.40	.50	.63	.65	.63	.63	.64	.65	.65	.66	203
.30	.32½	.32½	.30	.30	.35	.45	.54	.56	.54	.54	.55	.56	.56	.57	190
.27½	.27½	.27½	.28	.29	.31	.41	.58	.60	.58	.58	.59	.60	.60	.61	222
							.60	.62	.60	.60	.61	.62	.62	.63	
.25	.26½	.26½	.28	.30	.35	.50	.55	.57	.55	.55	.56	.57	.57	.58	232
---	---	---	---	.29	.32½	.45	.50	.52	.50	.50	.51	.52	.52	.53	
.21	.21	.22	.23½	.25	.28	.41	.45	.47	.45	.45	.46	.47	.47	.48	228
.15	.16½	.16½	.17½	.19	.26½	.35	.40	.42	.40	.40	.41	.42	.42	.43	287
	PER DAY							PER HOUR							
---	Monthly Roll						.74	.76	.74	.74	.75	.76	.76	.77	
---	2.50	2.50	2.50	2.65	2.65	5.00	.60	.62	.60	.60	.61	.62	.62	.63	
---	.....						.57	.59	.57	.57	.58	.59	.59	.60	
---	2.35	2.35	2.35	2.50	2.50	4.85	.50	.52	.50	.50	.51	.52	.52	.53	
---	2.00	2.00	2.00	2.15	2.15	4.50	.45	.47	.45	.45	.46	.47	.47	.48	
.30	.32½	.35	.35	.36	.47	.60	.60	.62	.60	.60	.61	.62	.62	.63	210
.25	.27½	.30	.30	.31	.42	.55	.55	.57	.55	.55	.56	.57	.57	.58	232
.22½	.25	.27½	.29	.29	.41	.52	.54	.56	.54	.54	.55	.56	.56	.57	253
---	.22½	.25	.26	.26	.40	.50	.53	.55	.53	.53	.54	.55	.55	.56	
.17½	.17½	.18½	.21	.21	.28	.35	.48	.50	.48	.48	.49	.50	.50	.51	291
---	---	---	---	---	---	---	.45	.47	.45	.45	.46	.47	.47	.48	
---	---	---	---	---	---	---	.41	.43	.41	.41	.42	.43	.43	.44	
---	---	---	---	---	---	---	---	---	---	---	---	.62	.64	.66	
						PER DAY (12 HOURS)									
2.75	2.75	2.75	2.75	2.90	3.15	6.00	6.60	6.84	6.60	6.60	6.72	6.84	6.84	6.96	253
2.50	2.50	2.50	2.50	2.65	2.90	4.60	6.00	6.24	6.00	6.00	6.12	6.24	6.24	6.36	254
1.85	1.85	1.85	1.85	2.00	2.25	3.80	4.92	5.16	4.92	4.92	5.04	5.16	5.16	5.28	285
1.75	1.75	1.75	1.75	1.85	2.10	3.60	4.68	4.92	4.68	4.68	4.80	4.92	4.92	5.04	288

THE UNITED RAILWAYS & ELECTRIC COMPANY OF BALTIMORE

WAGE RATES 1913 TO 1927

TRACK DEPT.	1913	1914	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926
5 Section Foremen	3.00	3.15	3.15	3.15	3.20	3.80	5.50	6.50	6.75	6.50	6.50	6.60	6.73	6.73
6 Division "	2.55	2.70	2.70	2.70	2.70	3.30	---	6.00	6.25	6.00	6.00	6.10	6.22	6.22
1 " "	2.40	2.50	2.50	2.50	2.90	3.40	5.30	5.25	6.50	6.25	6.25	6.35	6.45	6.45
27 Gang "	2.20	2.35	2.35	2.35	2.50	2.90	4.50	5.50	5.75	5.50	5.50	5.60	5.71	5.71
3 Asst. " "	2.00	2.15	2.15	2.15	2.35	---	---	4.75	4.95	4.75	4.75	4.85	4.95	4.95
24 Pavers	.30	.31½	.31½	.31½	.31½	.35	.50	.55	.57	.55	.55	.56	.57	.57
22 Rammers	.18	.19½	.19½	.19½	.20½	.24	.37½	.41½	.44½	.42½	.42½	.43½	.44½	.44
10 Welders	.17	.18	.18	.18½	.21½	.29	.42	.47	.49	.47	.47	.48	.49	.49
16 Track Mechanics	---	---	---	---	---	---	.43½	.47	.49	.47	.50	.50	.52	.52
14 Track Mechanics	---	---	---	---	---	.28	.40	.45	.47	.45	.45	.46	.47	.47
10 Chauffeurs	---	---	---	---	---	---	.40	.44	.46	.44	.44	.45	.46	.46
10 Corrugation Oprs.	---	---	---	---	---	---	.40	.47	.49	.47	.47	.48	.49	.49
3 Carpenters	.23½	.23½	.23½	.23½	.25	.29	.50	.55	.57	.55	.55	.56	.57	.57
25 Carpenters	---	---	---	---	.22	.22	.45	.50	.52	.50	.50	.51	.52	.52
7 Frogmen	.25	.25	.25	.25	.25	.34	.50	.50	.62	.60	.60	.61	.62	.62
2 Masons	.37½	.37½	.37½	.37½	.37½	.40	.50	.60	.62	.60	.60	.61	.62	.62
1 Gardener	---	---	---	---	---	---	---	---	---	---	---	---	.51	.51
2 Sand House Men	---	---	---	---	---	.23	.37	.41	.43	.41	.41	.42	.43	.43
445 Laborers	.14	.15	.15	.15	.20	.29	.35	.40	.42	.40	.40	.41	.42	.42
"	---	---	---	---	.19	.22½	---	---	---	.35	.35	---	---	---
										.30				

EXHIBIT NO. 16

1415

THE UNITED RAILWAYS & ELECTRIC COMPANY OF BALTIMORE

WAGE RATES 1913 TO 1927

1913	1914	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	At 1913 = 100
3.00	3.15	3.15	3.15	3.20	3.80	5.50	6.50	6.75	6.50	6.50	6.60	6.73	6.73	6.83	
2.55	2.70	2.70	2.70	2.70	3.30	---	6.00	6.25	6.00	6.00	6.10	6.22	6.22	6.32	248
2.40	2.50	2.50	2.50	2.90	3.40	5.30	6.25	6.50	6.25	6.25	6.35	6.45	6.45	6.55	273
2.20	2.35	2.35	2.35	2.50	2.90	4.50	5.50	5.75	5.50	5.50	5.60	5.71	5.71	5.81	264
2.00	2.15	2.15	2.15	2.35	---	---	4.75	4.95	4.75	4.75	4.85	4.95	4.95	5.05	252
.30	.31½	.31½	.31½	.31½	.35	.50	.55	.57	.55	.55	.56	.57	.57	.58	193
.18	.19½	.19½	.19½	.20½	.24	.37½	.41½	.44½	.42½	.42½	.43½	.44½	.44½	.45½	253
.17	.18	.18	.18½	.21½	.29	.42	.47	.49	.47	.47	.48	.49	.49	.50	294
---	---	---	---	---	---	.43½	.47	.49	.47	.50	.50	.52	.52	.53	
---	---	---	---	---	.28	.40	.45	.47	.45	.45	.46	.47	.47	.48	
---	---	---	---	---	---	.40	.44	.46	.44	.44	.45	.46	.46	.47	
---	---	---	---	---	---	.40	.47	.49	.47	.47	.48	.49	.49	.50	
.23½	.23½	.23½	.23½	.25	.29	.50	.55	.57	.55	.55	.56	.57	.57	.58	247
---	---	---	---	.22	.22	.45	.50	.52	.50	.50	.51	.52	.52	.53	
.25	.25	.25	.25	.25	.34	.50	.50	.62	.60	.60	.61	.62	.62	.63	252
.37½	.37½	.37½	.37½	.37½	.40	.50	.60	.62	.60	.60	.61	.62	.62	.63	168
---	---	---	---	---	---	---	---	---	---	---	---	.51	.51	.52	
---	---	---	---	---	.23	.37	.41	.43	.41	.41	.42	.43	.43	.44	
.14	.15	.15	.15	.20	.29	.35	.40	.42	.40	.40	.41	.42	.42	.43	307
---	---	---	---	.19	.22½	---	---	---	.35	.35	---	---	---	---	
									.30						

EXH

THE UNITED RAILWAYS & ELECTRIC COMPANY OF BALTIMORE

WAGE RATES 1913 TO 1927

	SHOPS DEPT.	1913	1914	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926
13	Spec. Mechanics	.26½	.27½	.27½	.29½	.32	.32½	.43	.63	.65	.63	.63	.64	.65	.65
159	Mechanics (1)	.24	.25½	.25	.27	.29½	.30	.40	.60	.62	.60	.60	.61	.62	.62
58	" (2)	.22½	.24	.24	.25	.27	.28	.37	.54	.56	.54	.54	.55	.56	.56
39	" (3)	.22	.23	.23	.24	.25	.26	.34	.48	.50	.48	.48	.49	.50	.50
20	" (4)	.20½	.22	.22	.23	.24	.25	.32	.42	.44	.42	.42	.43	.44	.44
13	Helpers (1)	.20	.21	.21	.22	.23	.23	.26	.40	.42	.40	.40	.41	.42	.42
9	" (2)	.18½	.20	.20	.20	.21½	.21½	.25	.35	.37	.35	.35	.36	.37	.37
8	" (3)	.17	.17½	.18½	.19	.20	.20	.23	.30	.35	.33	.33	.34	.35	.35
16	Car House Foremen	.26½	.28	.28	.30	.30	.33	.50	.58	.58	.57	.57	.68	.68	.70
98	Repairmen (1)	.22½	.24	.24	.25	.25	.26	.37	.54	.55	.54	.54	.55	.56	.56
45	" (2)	.21½	.23	.23	.24	.24	.25	.34	.48	.50	.48	.48	.49	.50	.50
26	" (3)	.19½	.21	.21	.23½	.23½	.24	.32	.42	.44	.42	.42	.43	.44	.44
1	Watchman	2.15	2.15	2.15	2.25	2.30	2.45	2.75	3.50	4.00	4.00	4.12	4.26	4.26	4.30
6	"	1.85	1.85	1.85	1.90	2.00	2.10	2.30	3.00	3.70	3.50	3.50	3.62	3.76	3.76

EXHIBIT NO. 16. 1416

THE UNITED RAILWAYS & ELECTRIC COMPANY OF BALTIMORE

WAGE RATES 1913 TO 1927

	1913	1914	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	At 1913 = 100
nics	.26½	.27½	.27½	.29½	.32	.32½	.43	.63	.65	.63	.63	.64	.65	.65	.66	
(1)	.24	.25½	.25	.27	.29½	.30	.40	.60	.62	.60	.60	.61	.62	.62	.63	262
(2)	.22½	.24	.24	.25	.27	.28	.37	.54	.56	.54	.54	.55	.56	.56	.57	253
(3)	.22	.23	.23	.24	.25	.26	.34	.48	.50	.48	.48	.49	.50	.50	.51	231
(4)	.20½	.22	.22	.23	.24	.25	.32	.42	.44	.42	.42	.43	.44	.44	.45	220
(1)	.20	.21	.21	.22	.23	.23	.26	.40	.42	.40	.40	.41	.42	.42	.43	215
(2)	.18½	.20	.20	.20	.21½	.21½	.25	.35	.37	.35	.35	.36	.37	.37	.38	205
(3)	.17	.17½	.18½	.19	.20	.20	.23	.30	.35	.33	.33	.34	.35	.35	.37	218
remen	.26½	.28	.28	.30	.30	.33	.50	.58	.58	.57	.57	.68	.68	.70	.71	268
(1)	.22½	.24	.24	.25	.25	.26	.37	.54	.55	.54	.54	.55	.56	.56	.57	253
(2)	.21½	.23	.23	.24	.24	.25	.34	.48	.50	.48	.48	.49	.50	.50	.51	237
(3)	.19½	.21	.21	.23½	.23½	.24	.32	.42	.44	.42	.42	.43	.44	.44	.45	231
	2.15	2.15	2.15	2.25	2.30	2.45	2.75	3.50	4.00	4.00	4.12	4.26	4.25	4.30	4.38	204
	1.85	1.85	1.85	1.90	2.00	2.10	2.30	3.00	3.70	3.50	3.50	3.62	3.76	3.76	3.86	209

THE UNITED RAILWAYS & ELECTRIC COMPANY OF BALTIMORE

COMPARISON OPERATING COSTS VARIOUS COMPANIES YEAR 1926

	Revenue Car Miles	Operating Revenues	OPERATING EXPENSES: Way and Structures	Equipment	Power	Conducting Transportation	Accidents & Damages	General & Miscel.	Depreciation	Total Operating Expenses	Taxes
Chicago (Surface)	132,451,712	$60,748,950	$2,984,485	$4,188,633	$4,024,370	$24,699,781	$1,936,202	$1,744,130	$4,893,888	$44,471,489	$3,400,000
Philadelphia	89,601,617	50,331,441	2,340,942	3,022,206	3,837,104	15,934,732	2,225,965	3,994,731	2,643,797	34,199,477	3,227,760
Boston	57,943,381	35,371,330	3,249,086	3,054,304	2,142,575	11,924,518	1,107,064	1,766,914	2,841,722	26,086,383	1,910,765
Pittsburgh	41,357,208	21,727,230	1,139,617	1,273,772	1,991,606	7,572,145	816,681	1,842,411	2,074,859	16,731,091	609,932
St. Louis	42,204,150	18,873,431	1,039,376	1,632,448	1,842,716	6,749,383	1,132,406	730,520	1,500,000	14,626,849	1,818,288
Cleveland	38,823,525	18,002,060 (B)	2,303,391 (B)	2,177,260 (B)	1,489,050	6,957,605	855,821	1,530,097	------	15,313,424	1,205,786
BALTIMORE	35,304,583	16,715,709	852,532	917,731	1,431,327	5,215,054	535,727	993,055	835,785	10,790,805	1,672,316
Washington (A)	23,247,328	10,598,606	781,894	627,766	735,748	3,508,216	280,075	548,502	967,020 (E)	7,640,730	891,368
Average 98 City Co.'s	8,842,166	4,057,000 (B)	397,700 (B)	391,127 (B)	387,450	1,392,813	------ (C)	395,323	------	2,964,413	251,618

CENTS PER MILE

Chicago (Surface)	45.86 6	2.25 8	3.16 5	3.03 8	18.65 2	1.46 7	1.32 8	3.69 4	33.56 6	2.37
Philadelphia	56.17 2	2.84 4	3.37 4	4.28 3	17.78 5	2.48 2	4.45 1	2.95 6	38.15 4	3.60
Boston	61.04 1	5.61 2	5.27 2	3.70 6	20.58 1	1.91 5	3.05 4	4.90 2	45.02 1	3.29
Pittsburgh	52.53 3	2.80 5	3.08 6	4.81 1	18.31 3	1.98 4	4.45 1	5.08 1	40.45 2	1.48
St. Louis	44.72 8	2.46 6	3.87 3	4.37 2	15.99 6	2.68 1	1.73 7	3.55 5	34.65 5	4.31
Cleveland	46.37 5	(B) 5.93 1	(B) 5.61 1	(B) 3.83 5	17.92 4	2.21 3	3.94 3	---	39.44 3	3.10
BALTIMORE	47.34 4	2.41 7	2.60 8	4.11 4	14.77 8	1.52 6	2.81 5	2.37 7	30.56 8	4.73
Washington (A)	45.60 7	3.36 3	2.70 7	3.17 7	15.09 7	1.20 8	2.36 6	4.16 3	32.86 7	3.83
Average 98 City Co.'s	45.88	(B) 4.49	(B) 4.42	(B) 4.38	15.75	---	(C) 4.47	---	33.51	2.84

PER CENT OF OPERATING REVENUE

Chicago (Surface)	4.91 8	6.90 4	6.62 7	40.66 1	3.18 6	2.87 8	8.05 3	73.20 5	5.59
Philadelphia	5.05 7	6.00 5	7.63 5	31.66 7	4.42 3	7.93 3	5.25 6	67.94 7	6.41
Boston	9.19 2	8.64 3	6.05 8	33.71 5	3.13 7	5.00 6	8.04 4	73.75 4	5.40
Pittsburgh	5.34 5	5.86 7	9.17 2	34.85 4	3.75 4	8.48 2	9.55 1	77.00 3	2.80
St. Louis	5.30 4	8.65 2	9.77 1	35.76 3	6.00 1	3.87 7	7.95 5	77.50 2	9.63
Cleveland	(B) 12.80 1	(B) 12.10 1	(B) 8.27 4	38.62 2	4.72 2				

FOLD OUT IS TOO LARGE TO BE FILMED

COMPARISON OPERATING COSTS VARIOUS COMPANIES YEAR 1926

OPERATING EXPENSES

y and ructures	Equipment	Power	Conducting Transportation	Accidents & Damages	General & Miscel.	Depreciation	Total Operating Expenses	Taxes	Non-Operating Income	Gross Income	Rate of Fare
,984,485	$4,188,633	$4,024,370	$24,699,781	$1,936,202	$1,744,130	$4,893,888	$44,471,489	$3,400,000	$ 424,651	$13,302,112	7¢
,540,942	3,022,206	3,837,104	15,934,732	2,225,965	3,994,731	2,643,797	34,199,477	3,227,760	1,342,354	14,246,538	8¢ - 7½¢ (some 3¢ trans
,249,086	3,054,304	2,142,575	11,924,518	1,107,064	1,766,914	2,841,722	26,086,383	1,910,765	109,982	7,484,164	10¢ (a few 6¢ lin
,139,617	1,273,772	1,991,606	7,572,145	816,681	1,842,411	2,074,859	16,731,091	609,932	350,210	4,736,417	10¢ -8-1/3¢ $1.50 Pass
,039,376	1,632,448	1,842,716	6,749,383	1,132,406	730,520	1,500,000	14,626,849	1,818,288	202,874	2,631,168	7¢
,303,391	(B) 2,177,260	(B) 1,489,050	6,957,605	855,821	1,530,097	------	15,313,424	1,205,786	155,621	1,638,471	(D) 7¢ - 1¢ Transf.
852,532	917,731	1,451,327	5,215,054	535,727	993,055	835,785	10,790,805	1,672,316	139,569	4,392,157	8¢ - 7½¢
781,894	627,766	735,748	3,508,216	280,075	548,502	967,020	(E) 7,640,730	891,368	1,186,189	3,252,697	8¢ - 6-2/3¢
397,700	(B) 391,127	(B) 387,450	1,392,813	------	(C) 395,323	------	2,964,413	251,618	59,668	900,637	----------

CENTS PER MILE

2.25	8	3.16	5	3.03	8	18.65	2	1.46	7	1.32	8	3.69	4	33.56	6	2.57	7	.32	7	10.04	6	Chicago
2.84	4	3.37	4	4.28	3	17.78	5	2.48	2	4.45	1	2.95	6	38.15	4	3.60	4	1.50	2	15.90	1	Philadelphia
5.61	2	5.27	2	3.70	6	20.58	1	1.91	5	3.05	4	4.90	2	45.02	1	3.29	5	.19	8	12.92	3	Boston
2.80	5	3.08	6	4.81	1	18.31	3	1.98	4	4.45	1	5.08	1	40.45	2	1.48	8	.85	3	11.45	5	Pittsburgh
2.46	6	3.87	3	4.37	2	15.99	6	2.68	1	1.73	7	3.55	5	34.65	5	4.31	2	.48	4	6.23	7	St. Louis
(B) 5.93	1	(B) 5.61	1	(B) 3.83	5	17.92	4	2.21	3	3.94	3	---		39.44	3	3.10	6	.40	5	4.22	8	Cleveland
2.41	7	2.60	8	4.11	4	14.77	8	1.52	6	2.61	5	2.37	7	30.56	8	4.73	1	.39	6	12.44	4	BALTIMORE
3.36	3	2.70	7	3.17	7	15.09	7	1.20	8	2.36	6	4.16	3	32.86	7	3.83	3	5.12	1	13.99	2	Washington
(B) 4.49		(B) 4.42		(B) 4.38		15.75		---		(C) 4.47		---		33.51		2.84		.67		10.18		Average 98 City Co.'s

PER CENT OF OPERATING REVENUE

4.91	8	6.90	4	6.62	7	40.66	1	3.18	6	2.87	8	8.05	3	73.20	5	5.59	6	.70	7	21.89	4	Chicago
5.65	7	6.00	5	7.63	5	31.66	7	4.42	3	7.93	3	5.25	6	67.94	7	6.41	5	2.66	2	28.31	2	Philadelphia
9.19	2	8.64	3	6.05	8	33.71	5	3.13	7	5.00	6	8.04	4	73.75	4	5.40	7	.31	8	21.16	6	Boston
5.34	5	5.86	7	9.17	2	34.85	4	3.75	4	8.48	2	9.55	1	77.00	3	2.80	8	1.61	3	21.80	5	Pittsburgh
5.50	4	8.65	2	9.77	1	35.76	3	6.00	1	3.87	7	7.95	5	77.50	2	9.63	2	1.08	4	13.95	7	St. Louis
(B) 12.80	1	(B) 12.10	1	(B) 8.27	4	38.65	2	4.75	2	8.50	1	---		85.07	1	6.70	4	.86	5	9.10	8	Cleveland
																						BALTIMORE

EXHIBIT NO. 18

THE UNITED RAILWAYS & ELECTRIC COMPANY OF BALTIMORE

AVERAGE FARE PAID IN LARGE EASTERN CITIES

City	Population Served		Rate of Cash Fare		Average Fare Paid	Relative Position in Group
New York	5,924,000		5¢		5.00	(9)
Chicago	3,048,000		7¢		5.90	(5)
Philadelphia	2,008,000		8¢, 3¢ ex.	(c)	7.48	(3)
Detroit	1,480,000		6¢, 1¢ T.		6.28	(8)
Pittsburg	1,250,000		10¢	(c)	7.81	(2)
Boston	1,200,000		10¢		9.26	(1)
St. Louis	1,010,000	(a)	8¢	(c)	7.22	(4)
Cleveland	1,000,000		7¢, 1¢ T.	(c)	6.78	(7)
BALTIMORE	843,000		8¢	(b)	6.82	(6)

(a) 8 cents July 1st, 1927

(b) Park Tax deducted.

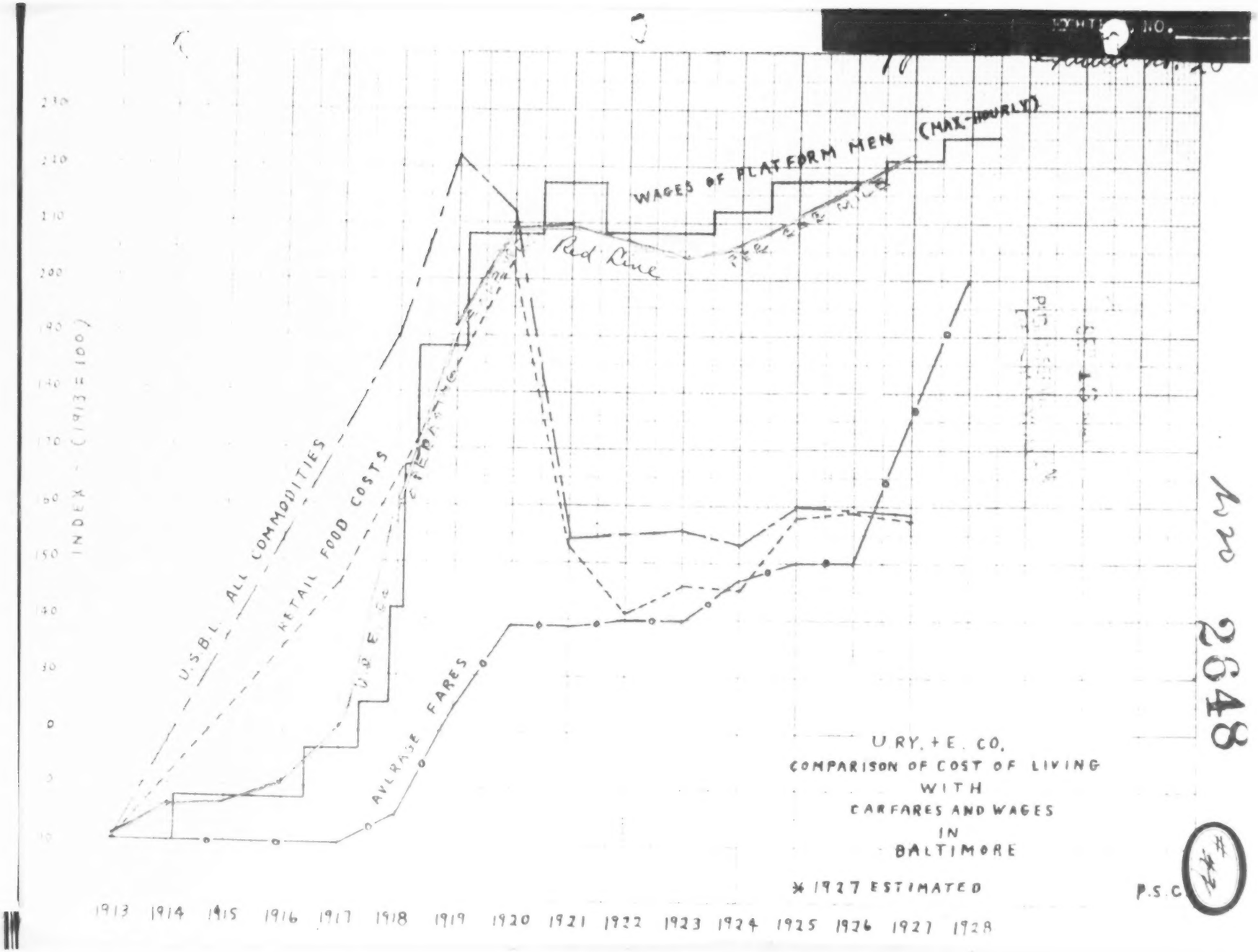
(c) Gross Receipts Tax deducted.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Estimated revenue passengers, operating expenses and net income for the year 1926, on the basis of 4 tokens for 25 cents in place of 2 tokens for 15 cents, and on the hypothesis that the increase in revenue passengers would be adequate to maintain gross receipts at the same level.

	1926 Actual (2 Tokens For 15¢)	1926 Estimated (4 Tokens For 25¢)	Increase	De
OPERATING REVENUE				
Passenger Revenue	$16,483,923	$16,483,923		
Revenue from other Railway Operation	231,786	231,786		
Total Operating Revenue	16,715,709	16,715,709		
OPERATING EXPENSES				
Maintenance of Way and Structures	852,532	916,817	$ 64,285	
Maintenance of Equipment	917,731	987,084	69,353	
Maintenance of Power	38,968	38,968	-	
Total Maintenance	1,809,231	1,942,869	133,638	
Depreciation	835,785	835,785		
Power Service	1,412,359	1,319,057	106,698	
Conducting Transportation	5,219,054	5,609,035	393,981	
Traffic	4,164	4,164		
General and Miscellaneous	1,528,782	1,528,782		
Transportation for Investment Credit	Cr. 14,970	Cr. 14,970		
Total Operating Expenses	10,790,805	11,425,122	634,317	
Taxes, Insurance, etc.	1,672,316	1,611,316		6
Total Operating Expenses, Taxes, Insurance, etc.	12,463,121	13,036,438	573,317	
Net Operating Income	4,252,588	3,679,271		57
Non-Operating Income	139,569	139,569		
Gross Income	4,392,157	3,818,840		57
Deductions from Gross	3,382,102	3,382,102		
Net Income	1,010,055	[illegible]		

FOLD OUT IS TOO LARGE TO BE FILMED



U.RY. + E. CO.
COMPARISON OF COST OF LIVING
WITH
CARFARES AND WAGES
IN
BALTIMORE

* 1927 ESTIMATED

P.S.C.

2648

Railways' Exhibit No. 21
Filed September 13, 1927.

1021

Retail and Wholesale Trade

of

Baltimore, Maryland

(A Detailed Report on Sales, Merchandise Outlets, Number of Establishments, Employes, Wages and Inventories)

Based on

A Census of Distribution

Conducted by

The United States Bureau of the Census

Prepared by the

DOMESTIC DISTRIBUTION DEPARTMENT
Chamber of Commerce of the United States
Washington, D. C.
August, 1927

36

(Retail Sales By Commodity Groups)

AUTOMOTIVE

	Sales
Automobiles, Trucks & Tractors	$ 15,862,400
Gasoline & Other Petroleum Products	13,444,600
Automobile Accessories	5,678,600
Motorcycles (& Bicycles)	116,700
Total.....	$ 35,102,300

FURNITURE AND HOUSE FURNISHINGS

Furniture	$ 15,657,200
House Furnishings	9,061,800
Electrical Appliances	2,087,800
Stoves & Ranges, Coal, Gas, Oil & Electric	1,368,900
Art Goods & Antiques	1,065,100
Crockery, China & Glassware	901,600
Household Supplies	439,700
Kitchen Utensils	111,200
Total.....	$ 30,693,300

BUILDING MATERIAL AND HEATING SUPPLIES

Lumber & Planing Mill Products	$ 7,986,300
Other Building Material & Sheet Metal	6,258,400
Plumbing & Heating Fixtures & Supplies	2,480,200
Electrical Supplies	1,169,000
Paint, Oil & Varnish	696,200
Glass--Window & Plate	391,600
Wallpaper	138,600
Total	$ 19,120,300

WHOLESALE

TABLE XIII

Number of Establishments

Persons Engaged

Salaries and Wages

Inventories

Net Sales

Kind of Business	Number of Establishments	Persons Engaged			Salaries and Wages [1]	Inventory [2]		Net Sales
		Employees	Firm Members and Proprietors	Total		Average for Year	Actual December 31, 1926	
Art & Antique	4	36	4	40	60,300	121,000	119,100	575,900
Automobile & Automobile Accessory	44	523	35	558	908,300	1,577,200	1,661,900	21,247,900
Bakeries	40	1,709	36	1,745	2,150,700	685,500	671,200	13,251,100
Boot & Shoe	20	187	18	205	347,800	820,700	909,300	6,222,900
Building Materials	68	1,072	42	1,114	1,830,500	3,203,400	3,192,900	25,125,500
Candy & Confectionery	25	331	22	353	405,400	180,200	196,900	3,767,300
Cigar & Tobacco	34	312	34	346	532,900	854,800	862,700	13,784,200
Clothing Women's, inc. Fur	39	422	34	456	706,800	953,700	927,800	7,466,300
Clothing & Furnishings, Men's Ready-to-Wear	43	300	48	348	501,600	970,700	784,500	6,666,800
Coal, Wood & Ice	30	471	8	479	870,700	57,100	63,400	19,750,000
Dairy & Poultry Products	34	170	40	210	234,400	222,300	275,300	8,774,500
Drug	35	767	32	799	1,167,100	1,801,000	1,778,500	16,718,400
Dry Goods & Notions	94	2,326	120	2,446	3,694,900	10,150,000	7,667,500	71,980,100
Electrical Supply & Appliance	25	348	12	360	476,300	539,100	512,200	4,899,200
Fixtures	8	86	9	95	142,300	458,100	464,900	2,568,900
Fruit & Vegetable	120	533	116	649	902,800	82,700	117,900	26,189,900
Furniture & House Furnishings	53	638	50	688	1,036,200	2,009,500	1,895,200	12,268,000
Gasoline & Oil	31	1,013	11	1,024	1,668,700	1,842,200	1,824,700	25,442,900
Grocery & Delicatessen	101	1,623	73	1,696	2,454,300	2,454,600	3,182,900	46,971,200
Hay, Grain & Feed	44	391	35	426	774,400	3,050,500	3,442,200	59,533,300
Hardware	71	654	45	699	1,197,800	1,615,500	1,814,500	12,080,900
Hats & Caps, Men's and Boys'	4	17	4	21	27,500	87,100	79,800	385,500
Jewelry	14	74	16	90	126,300	405,900	435,800	2,021,500
Leather Goods	9	240	9	249	336,400	1,452,700	1,463,600	3,887,300
Meat, Poultry & Fish	84	1,066	80	1,146	1,569,000	1,528,200	1,058,600	32,397,500
Millinery & Artificial Flowers	6	66	6	72	81,100	67,700	44,900	1,293,400
Musical Instruments & Sheet Music	8	608	4	612	951,600	923,500	1,014,200	5,152,500
Optical Goods	7	84	2	86	125,400	120,500	153,300	466,300
Paint, Oil, Varnish & Wall-paper	26	167	21	188	249,500	463,400	464,400	3,672,900
Paper & Paper Goods	28	498	19	517	980,000	1,177,500	1,151,500	13,673,900
Plumbing & Heating Supplies & Fixtures	34	472	6	478	938,000	838,400	974,100	7,440,400
Radio	4	42	2	44	106,300	70,000	72,700	1,143,300
Soft Drink & Ice Cream	4	50	3	53	91,700	10,400	10,400	443,800
Stationery, Books & Magazines, etc.	29	223	17	240	333,900	343,200	385,300	2,049,600
Toys & Sewer	4	43	4	47	55,800	48,500	52,900	433,200
Miscellaneous	108	989	73	1,062	1,287,700	2,001,600	2,085,800	17,765,490
TOTAL	1,327	18,471	1,090	19,561	29,336,400	43,229,400	41,799,000	502,546,400

[1] Exclusive of compensation or earnings of Proprietors and Firm Members.

[2] At cost.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

ESTIMATE OF INCOME FOR YEAR 1928 AT PRESENT RATES OF FARE

BASED ON ESTIMATED STATEMENT OF INCOME FOR 1927, WITH REVENUE DECREASES, 0% TO 5%,

AND ADJUSTMENT OF OPERATING EXPENSES FOR INCREASES IN WAGES AND POWER COSTS.

		YEAR 1928				
	YEAR 1927 (Estimated)	0% Decrease In Revenue	1% Decrease In Revenue	2% Decrease In Revenue	3% Decrease In Revenue	4% Decrease In Revenue
Passenger Revenue	$16,011,226	$16,011,000	$15,851,000	$15,691,000	$15,531,000	$15,371,000
Other Revenue	234,883	235,000	235,000	235,000	235,000	235,000
Total	16,246,109	16,246,000	16,086,000	15,926,000	15,766,000	15,606,000
Operating Expenses	10,108,944	# 10,264,000	10,264,000	10,264,000	10,264,000	10,264,000
Depreciation (5% of Revenue)	812,305	812,300	804,300	796,300	788,300	780,300
Total	10,921,249	11,076,300	11,068,300	11,060,300	11,052,300	11,044,300
Net Operating Revenue	5,324,860	5,169,700	5,017,700	4,865,700	4,713,700	4,561,700
Taxes : Property, etc.	542,110	542,000	542,000	542,000	542,000	542,000
Park Tax @ 6.7%	1,072,752	1,072,700	1,062,000	1,051,000	1,040,300	1,030,000
Income Tax	11,610	-	-	-	-	-
Total	1,626,472	1,614,700	1,604,000	1,593,000	1,582,300	1,572,000
Operating Income	3,698,388	3,555,000	3,413,700	3,272,700	3,131,200	2,989,700
Non-Operating Income	171,000	171,000	171,000	171,000	171,000	171,000
Gross Income	3,869,388	3,726,000	3,584,700	3,443,700	3,302,200	3,160,700
Deductions	3,445,000	3,445,000	3,445,000	3,445,000	3,445,000	3,445,000
Net Income	424,388	261,000	139,700	• 1,300	• 142,800	• 284,300

Deficit
(• Decrease).

Increase in Operating Expenses

Wage Increase	$130,000
Power Purchased	25,000
	$155,000

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

ESTIMATES OF INCOME FOR YEAR 1928 AT PRESENT RATES OF FARE

BASED ON ESTIMATED STATEMENT OF INCOME FOR 1927; WITH REVENUE DECREASES, 0% TO 5%,

AND ADJUSTMENT OF OPERATING EXPENSES FOR INCREASES IN WAGES AND POWER COSTS.

		YEAR 1928					
	YEAR 1927 (Estimated)	0% Decrease In Revenue	1% Decrease In Revenue	2% Decrease In Revenue	3% Decrease In Revenue	4% Decrease In Revenue	5% Decrease In Revenue
Passenger Revenue	$16,011,226	$16,011,000	$15,851,000	$15,691,000	$15,531,000	$15,371,000	$15,211,000
Other Revenue	234,883	235,000	235,000	235,000	235,000	235,000	235,000
Total	16,246,109	16,246,000	16,086,000	15,926,000	15,766,000	15,606,000	15,446,000
Operating Expenses	10,108,944	# 10,264,000	10,264,000	10,264,000	10,264,000	10,264,000	10,264,000
Depreciation (5% of Revenue)	812,305	812,300	804,300	796,300	788,300	780,300	772,300
Total	10,921,249	11,076,300	11,068,300	11,060,300	11,052,300	11,044,300	11,036,300
Net Operating Revenue	5,324,860	5,169,700	5,017,700	4,865,700	4,713,700	4,561,700	4,409,700
Taxes : Property, etc.	542,110	542,000	542,000	542,000	542,000	542,000	542,000
Park Tax @ 6.7%	1,072,752	1,072,700	1,062,000	1,051,000	1,040,300	1,030,000	1,019,000
Income Tax	11,610	-	-	-	-	-	-
Total	1,626,472	1,614,700	1,604,000	1,593,000	1,582,300	1,572,000	1,561,000
Operating Income	3,698,388	3,555,000	3,413,700	3,272,700	3,131,200	2,989,700	2,848,700
Non-Operating Income	171,000	171,000	171,000	171,000	171,000	171,000	171,000
Gross Income	3,869,388	3,726,000	3,584,700	3,443,700	3,302,200	3,160,700	3,019,700
Deductions	3,445,000	3,445,000	3,445,000	3,445,000	3,445,000	3,445,000	3,445,000
Net Income	424,388	281,000	139,700	• 1,300	• 142,800	• 284,300	• 425,300

(• Decrease). Deficit

Increase in Operating Expenses

Wage Increase	$130,000
Power Purchased	25,000

23

ADDITIONS TO AND RETIR-MENTS FROM

THE VALUATION OF

JANUARY 1,1924.

SUMMARY OF RETIREMENTS

.....

	1924	1925	1926
Accounts 504,5,6,7,8,and 10.			
Track retired due to reconstruction.			
Earth Ballasted Tangent	62,300	213,000	102,200
Rock " "	284,000	192,500	52,500
Suburban " "	58,000	16,000	177,000
Special Work	77,000	60,300	93,700
Abandoned & Removed (includes paving if any)	79,800	15,200	77,100
Account 511			
Paving on Reconstruction	158,000	142,000	59,700
Account 515			
Bridges			
Belair Road		12,200	
Account 517			
Signals & Interlocking	11,000		1,600
Account 519			
Poles & Fixtures	1,100	14,100	26,200
Account 520			
Underground Conduits	300	400	1,300
Account 521			
Distribution System	1,600		
	6,900	2,500	26,100
	7,800	13,600	9,300
	22,600	23,700	16,800
	17,300	118,100	96,500
	3,400		
		340	340

	1924	1925	1926
Account 530			
Passenger & Cgmb. Cars		46,000	46,000
Account 533			
Electrical Equip. of Cars		168,100	168,100
Account 542			
Power Plant Equip.	100	4,200	
Account 544			
Transmission System		36,000	9,500
Various Other Items	11,571	7,325	7,210
	$802,771	$1,085,565	$ 969,950
Total 1924-1925-1926			$ 2,858,286
Value Added	$1,635,284	$1,399,673	$ 828,609
Total 1924-1925-1926			$3,863,556
Increase in Valuation			$1,005,270

NOTE; All values are without general overheads of any kind.
Retirements are at P.S.C. values. Additions at cost.

FOLD OUT IS TOO LARGE TO BE FILMED

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

ESTIMATE OF NET INCOME : ADULT FARE @ 10¢ - HALF FARE @ 5¢ -
COMMUTATION RATES INCREASED BY 33-1/3% - SCHOOL TICKETS @ 5¢ (UNCHANGED).

	Present Fare With No Change In Revenue	10¢ Fare (See Note)	Adjustments To Arrive At Amt. of Return
	1928	1928	
Passenger Revenue	16,011,000	20,156,000	
Other Revenue	235,000	235,000	
Total	16,246,000	20,391,000	
Operating Expenses	10,264,000	# 10,394,000 - Add	13,207 (a)
Depreciation	812,300	2,200,000	
Total	11,076,300	12,594,000	
Net Operating Revenue	5,169,700	7,797,000	
Taxes - Property, etc.	542,000	542,000 - Deduct	3,786 (b)
Park Tax - 6.7% Pass. Rev.	1,072,700	1,350,500	
Income Tax	-	355,000	
Total	1,614,700	2,247,500	
Operating Income	3,555,000	5,549,500	
Non-Operating Income	171,000	171,000 - Deduct	133,000 (c)
Gross Income	3,726,000	5,720,500 - Deduct	142,421 = 5,578,079
Deductions	3,445,000	3,445,000	
Net Income	281,000	2,275,500	

NOTE: Passenger revenue under 10¢ fare is computed on estimated revenue passengers for 1927, at the proposed rates, with a 5% deduction from the total revenue so determined, as follows :

	Rev. Pass. 1927 (9 Mos.Act.- 3 Mos.Est.)	Rates of Fare Present	Rates of Fare Proposed	Revenue at Proposed Rates
1st County	2,318,269	4½	6	$ 139,096
2nd "	268,635	5	7	18,806
3rd "	44,977	5	7	3,148
Both. Steel	1,342,368	5	7	93,966
Miscellaneous	7,992	-	-	292
Adult	7,354,512	8	10	735,451

(a) Int. on Bethlehem Steel Co. Const. - Transferred from Commission for paying coupon interest - " "

(b) Tax refund on Sparrows Point bonds - Transferred to D

(c) Sundry items not properly includible in "Fair Return"

# OPERATING EXPENSES		
1st 9 Mos. 1927 Actual		$7,356,722
Last 3 Mos. 1926 Actual	$2,537,598	
Less 1% Decrease	25,376	2,512,222
Additional Power Cost		120,000
Additional Accident Reserve,		120,000

EXHIBIT NO. 25.

VALUATION DEPARTMENT

REPORT ON DEPRECIATION

October 25, 1927.

BANCROFT HILL,

Valuation Engineer.

October 24, 1927.

Mr. C. D. Emmons,
President.

Dear Mr. Emmons:

Pursuant to your order, in which you instructed me to report on the average annual amount necessary to make good the retirements due to depreciation, obsolescence, inadequacy, the orders of municipal authorities and all other forces which make such replacements necessary, in which order you placed at my disposal the experience of both yourself and your entire staff; I herewith respectfully submit the following report.

In arriving at the proper allowance, in the majority of cases, it has been possible to base the amount of the allowance on our own actual experience, and in these cases, about 75%, this has been done. The history of transportation in this city also gives a very strong indication of the necessity of a proper allowance for replacements. As an example of it, if we look forward today we can not predict any great changes in the art of mass transportation for large cities, but it is known that in the last 70 years there have been developed four distinct systems; the first of these, the Horse Car, became obsolete in this city in 32 years; the second, and relatively most expensive, the Cable system, became obsolete within 7 years; the third, the hand brake, Single Truck Car, on dirt ballasted tram girder rail with cobble paving, became obsolete in 20 years. The first system shows a charge due to obsolescence alone of over 3% a year; the second, a charge of over 14%, and the third, a charge of 5%. The mere fact that no one foresaw the necessity for such charges is without bearing, they certainly existed. This history alone would certainly justify at least 5% on the depreciable property.

There is at the present moment an example of obsolescence in the Mt. Washington Viaduct. In this case we have a well maintained bridge, with practically no observable depreciation, representing over 6 per cent. of our total bridge value. On the day that it was decided that public convenience and the best operation required the abandonment of this bridge for the new one

erected parallel to it by the city, the whole structure, including right of way, became obsolete, and except for its trifling salvage value, must be written off the books. Another good example of obsolescence is the old open cars; these cars were well maintained and had, apparently, many more years of useful life, when owing to changes in policy necessary for public safety, this large investment almost at once became obsolete. As another example, 387 miles of overhead feeder were removed in the ten-year period between 1914 and 1924, mostly by demand of public authority and principally by reason of the extensions made to the municipal conduit system. Fifty-eight miles have been taken down since 1924 and there still remains approximately 204 miles of aerial feeders within the City limits which will be subject to removal from time to time as the conduit system is further extended.

The first accounts which should be considered are 504, 505-6-7-8-10-11, which constitute track.

Abandonment of Track in the last 25 years has occurred principally through rerouting. It would appear that from now on if traffic congestion grows in the future as it has in the past, there must occur more rerouting due to rapid transit facilities, which must some day be provided if this city is to continue its present growth.

In this group of property, it will be possible to find in many cases abandonment exclusively, as distinguished from termination.

The following tables give the track abandoned and removed during the last nine years. The total of this track is 20.31 miles or 2.25 miles per year. As to the liability of this rate being permanent, it should be remembered that the nine year period on which it is based starts after the company is twenty years old and some of the parts which went to make up its system were over 75 years old.

TABLE SHOWING TRACK ABANDONED AND REMOVED.
JAN. 1, 1918, TO JAN. 1, 1927.

Year Removed		Feet S. T.
1918	Carrollton & Fayette St.	185
1918	Madison & Whitelock Sts.	211
1918	Charles & Lombard Sts.	74
1918	Park Ave. & Preston St.	95
1918	Pratt & South Sts.	84
1918	Centre east of Howard St.	60
1918	Fort Ave. & Light St.	158
1918	Curtis Bay Line, South end	1800
1918	Belair Rd. at north end	190
1918	Pikesville Jerkwater	15500
1919	Charles St. S. of Fort Ave.	60
1919	Linden & North Aves.	121
1920	Francis, Retreat to Fulton	2498
1920	Falls Road Line	3326
1920	Aliceanna, Wolfe to Broadway	1108
1920	Exeter & Stiles Sts.	528
1920	Ellwood, Hudson to O'Donnell	1742
1920	Gilmor near Lombard St.	60
1920	Fayette & Washington St.	200
1920	Patterson Pk. & Monument St.	63
1920	First & Toone Sts.	106
1920	McCulloh, North to Park Ter.	3590
1920	Middle River Line	860
1921	Charles, Lombard to Barre	2085
1921	Charles & Lexington Sts.	106
1921	Charles & Fayette Sts.	185
1921	Charles & North Ave.	137
1921	Maryland & North Ave.	253
1921	Lexington & Aisquith Sts.	185
1921	Lexington & Caroline	74
1921	Broadway & Shakespeare St.	53
1921	Ann & Pratt Sts.	100
1921	Holliday, Balto., to Fayette	301
1921	Chester, Mon. to McElderry	401
1921	Baltimore west of Gay St.	60
1921	Fleet, Milton to Patterson Pk.	1600
1921	Frederick Rd. at Woodland	121
1921	Third St. near Eastern Ave.	60
1922	Falls Rd., Md. Ave., to 36th	17086
1922	Albermarle, Balto., to Trinity	1800
1922	Ann, Thames to Eastern Ave.	1747
1922	Lafayette, Charles to Falls Rd.	900
1922	Harford Rd. & Abbottston	222
1922	Bay Shore Loop	1045
1922	Pikesville Jerkwater	3000

1923	Washington, Mon. to Fayette St.	3000
1923	Orleans, Wolfe to Patterson Pk.....	1600
1923	O'Donnell & First St.	2703
1923	Milton, Fait to Fleet St.	1447
1923	Ann, Pratt to Baltimore & Ann, Bank to Eastern Ave.	1410
1923	Patterson Park & Eastern	486
1923	Chester & Monument Sts.	79
1923	Washington & Monument Sts.	169
1923	Balto., Ann to Wolfe St.	364
1923	8th St., Eastern to Bank St.	232
1923	Pikesville Jerkwater	3000
1923	Edmondson Ave. at Ten Hills.....	116
1923	Washington & Preston Sts.	169
1923	Pratt & Wolfe Sts.	169
1923	Hudson & Third Sts.	232
1924	36th, east of Roland Ave.....	60
1924	Edmondson E. of 7th St.	60
1924	Charles & Wells Sts.	24
1924	Harford Rd. & North Ave.	240
1924	Bond & Gough Sts.	48
1924	Broadway, Orleans to Jefferson.....	300
1924	Bank & Wolfe Sts.	383
1924	Jefferson, Broadway to Wolfe.....	900
1924	Howard & Lombard Sts.	120
1924	Milton, Foster to Fait	786
1924	O'Donnell, East to First St.	1500
1924	First, O'Donnell to Toone	1400
1924	Ann St., Bank to Eastern Ave.....	700
1924	Fleet St. Patterson Pk. Ave.	48
1924	Fort Ave., near Light St.	60
1925	Harford Rd. at Hillen	120
1925	Harford Rd. N. of Gibbons	120
1925	Fawn, Albemarle to Exeter.....	336
1925	Trinity, Albemarle to Exeter.....	457
1925	Exeter, Trinity to Fawn.....	184
1925	Eastern, Bond to Broadway	850
1925	Preston, & Milton Ave.	230
1925	Pikesville Jerkwater	720
1925	Walbrook Junction	60
1925	Bay Shore Line, Power Sta. Sid.	500
1926	Bank, Exeter to Patterson Pk.	8619
1926	Hudson, Milton to Kenwood	2500
1926	Gilmor at Lanvale St.	330
1926	Biddle & Brevard Sts.	230
1926	Frederick Rd. at Augusta	62
1926	Wolfe, Aliceanna to Eastern.....	705
1926	Pikesville Jerkwater	5280
	TOTAL	107,248 20.31 Mi.

There were in the valuation 242 miles of paved track, tangent and special; 163 miles of unpaved track, tangent and special; and 29 miles of carhouse, storage yard and loop track, tangent and special. The 2.25 miles per year applies to the first two or 405 miles. The 29 miles of carhouse storage yard and loop track will go out with the carhouses which have a rate of 2½%. The combined weighted average rate is, therefore, .7%.

Abandonment of track .7% of $20,025,900.....$140,200

In the last 8 years there were rebuilt an annual average of 12.47 miles of paved track and 4.01 miles of open tee rail, as shown by accompanying chart. This would indicate an average life of 19.5 years for paved and 40 years for open tee.

The average value in the valuation of paved track is $56,500 per mile and of open tee $28,000 per mile. This latter figure includes carhouses, storage yards, and loops.

$56,500x242	$13,700,000.00
28,000x192	5,400,000.00
	$19,100,000.00

Includes carhouses, storage yards and loops. P. S. C. undepreciated, without overheads, for these accounts is $19,075,000, check within 1% (County Grading Omitted).

To paved track there is a credit of 66 2-3% of ballast not renewed and 50% of grading. To unpaved track there is a credit of 75% ballast not renewed and 25% of ties. This gives a total credit of $6,100 per mile for paved and $4,500 for unpaved. There is also a credit of 50 cents per foot for salvage of rail and paving, etc., tangent and special.

12.47 miles per yr. at	$47,800	$596,000	
4.01 " " " "	20,900	83,600	$679,600

The above makes no allowance for the retirement of carhouses, storage yards, and loops as they are largely maintained through maintenance.

The above $679,600 based on the valuation and experience for the past nine years is checked very closely by the following estimate of the engineering department.

ESTIMATED DEPRECIATION EXPENDITURES PER ANNUM.

ENGINEERING DEPARTMENT.

Girder track in paved streets, 12.47 miles	$613,600
Special Work Renewals Installed separate from above	69,300
Open Track—Tee Rail, 4 miles	76,600
Including Special Work—	
Automatic Switching Devices	7,000
Total	$766,500

This checks the above estimate within 13% and is, of course, on a more expensive base, as the old light track constantly grows less.

Account 512—Roadway Machinery & Toole.

This account is composed largely (about 75%) of track grinders, air compressors, etc., which must frequently be replaced and small tools which are maintained by maintenance.

Account 515—Bridges, Trestles & Culverts.

In the past nine calendar years there has been retired through obsolescence only one bridge, Belair Rd., $12,179, in 1925, but in that portion of 1927, already gone, two more have been retired so that in three years there have been retired the following three bridges with the value new of:

Mt. Washington	$ 83,711
Mt. Holly	19,066
Belair Rd.	12,179
	$114,951.

These three bridges alone represent realized obsolescence equivalent to 9% of our total value of $1,281,419 for this entire account. The Mt. Washington bridge alone represented 6½% in one year. For this certain risk of future retirements, uncertain as to amount and time, an allowance of 3% is moderate.

3% of $1,281,419 ..... $38,400.

Account 516—Crossings, Fences and Signs.
Maintained by Maintenance.

Account 517—Signals and Interlocking Aparatus.

Obsolescence has been the controlling factor in the retirement of this class of equipment, e. g., (1) the "Kinsman" block signals which were installed in 1911 on the Guilford Avenue Elevated were retired in 1920, when replaced with a more effective and reliable type of track circuit signals preliminary to operation at closer headway; (2) an installation of trolley contactor type signals in 1918, on the Windsor Hills line was replaced in 1920 with a system of T. D. B. circuit signals, due to inadequacy following more complicated traffic operation. The double-tracking of the Carney Line to Parkville, now in progress, will retire the trolley contactor signals installed in 1921; and it may be found expedient to replace in the near future the existing trolley-contactor signals on both the Halethorpe and Middle River Lines, these signals having been installed in 1917 and 1924, respectively.

Experience with the modern type of track-circuit signals, which have been in use on this system since the Sparrows Point-Bay Shore Line installation in 1918, indicates a relatively low rate of physical deterioration, the useful life being controlled rather by obsolescence and inadequacy due to changes in schedules and other operating conditions. Regardless of any advances which may be made in the art, it is practically certain that future changes in service conditions and requirements alone will render wholly or partly inadequate or obsolete any system of signals or interlocking before an average life of 20 years has been obtained. A rate of 5% is, therefore, considered conservative for this kind of equipment, requiring an annual appropriation of

5% of $145,897 ..... $7,300.00.

Account 519—Poles And Fixtures.

Three types of poles, viz., iron, wood and concrete, enter this account, each having a different average life.

The fixtures, comprising mostly cross-arms and mast-arms, may be considered as having the same average life as the poles on which they are used. With iron poles, physical deterioration is mostly a function of corrosion due to the action of the elements and although this action can be materially retarded on the exposed outside surface by painting and at the ground line by the addition of protective sleeves, no practical means has been devised for preventing corrosion of the interior surface nor for eliminating deterioration of the butts from electrolytic action. In addition to physical deterioration, there must also be considered the factor of obsolescence resulting from abandonments due to rerouting; demands of public authority originating with the Highways Engineer, Paving Commission, etc., in connection with street changes; the substitution of building anchorage to clear sidewalks of pole obstructions, etc. Basing opinion on the 30 years, experience with iron poles and allowing for the miscellaneous functional factors above mentioned, an over-all retirement of 3% is reasonable.

Wood poles show an average life on this system of about 15 years, the renewals during the past 10 years having been at the average rate of 496 poles a year out of a total of 7,558 in service (Jan. 1, 1924). In quality, the stock procurable today is inferior to the poles originally erected and even with improved methods of preservative treatment will not last as long as those heretofore obtained. Taking the average natural life as 15 years, and allowing for such factors as storm casualties, abandonments, demands of public authority, etc., an over-all rate of 8% is used for this type of pole and its accessory fixtures. These poles are largely replaced through maintenance and for that reason the replacement allowance is reduced to 2%. Concrete poles are still in the experimental stage in so far as their use on this system is concerned, and their probable rate of retirement is, therefore, conjectural. Taking into account such factors as abandonments, demands of public authority, etc., an over-all rate of 6% is applied to this class of property.

Summarizing as follows the three classes of poles and

their fixtures, and applying the respective annual rates as determined above, an annual over-all weighted average of 2.8% is obtained for the entire account.

Class	Prorated P. S. C. Undepreciated Value	Annual	Annual Reserve Appropriation
Iron	$829,582	3%	$24,900
Wood	346,655	2%	6,900
Concrete	19,126	6%	1,100
	$1,195,363	2.8%	$32,900

Account 520—Underground Conduits.

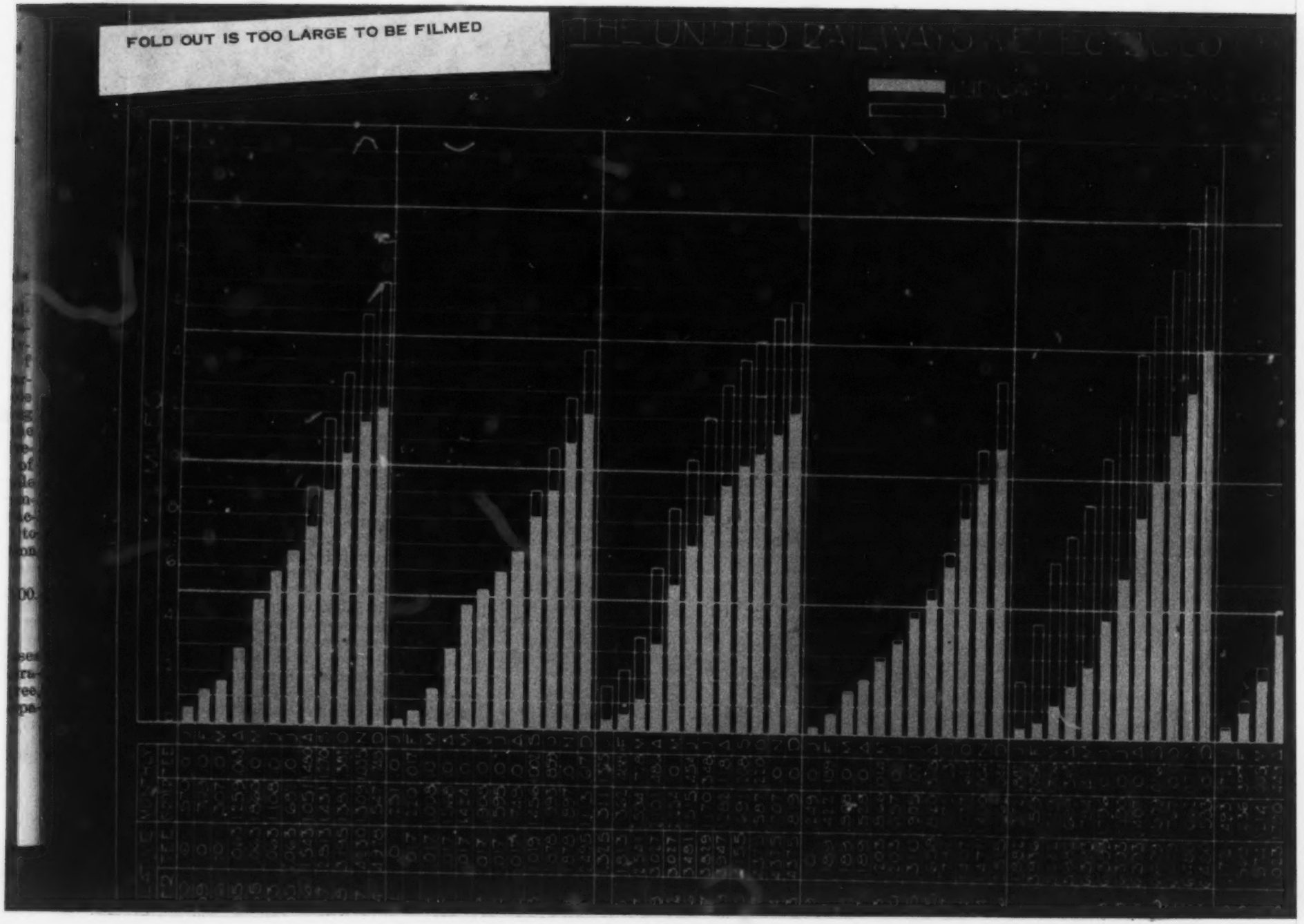
Four underground conduit lines are owned by this company, viz., Eastern Avenue, Frederick Road, Nunnery Lane, Harford Avenue, Park Heights Avenue-Belvedere Avenue, and in addition a number of miscellaneous lateral pole connections from the municipally-owned duct lines. No figures as to the natural life of underground conduits are available, as physical deterioration except in the case of such parts as manhole covers is small; but functional obsolescence, resulting from changes in load centers requiring a redesign of the power system, is a factor which may lead to the retirement of such property long before the expiration of natural life (especially in the case of the lateral pole connections). Public requirements may also be a contributing cause of premature retirement. For these factors of obsolescence, an over-all rate of 2% is applied to this account, which will require an annual appropriation to the reserve of

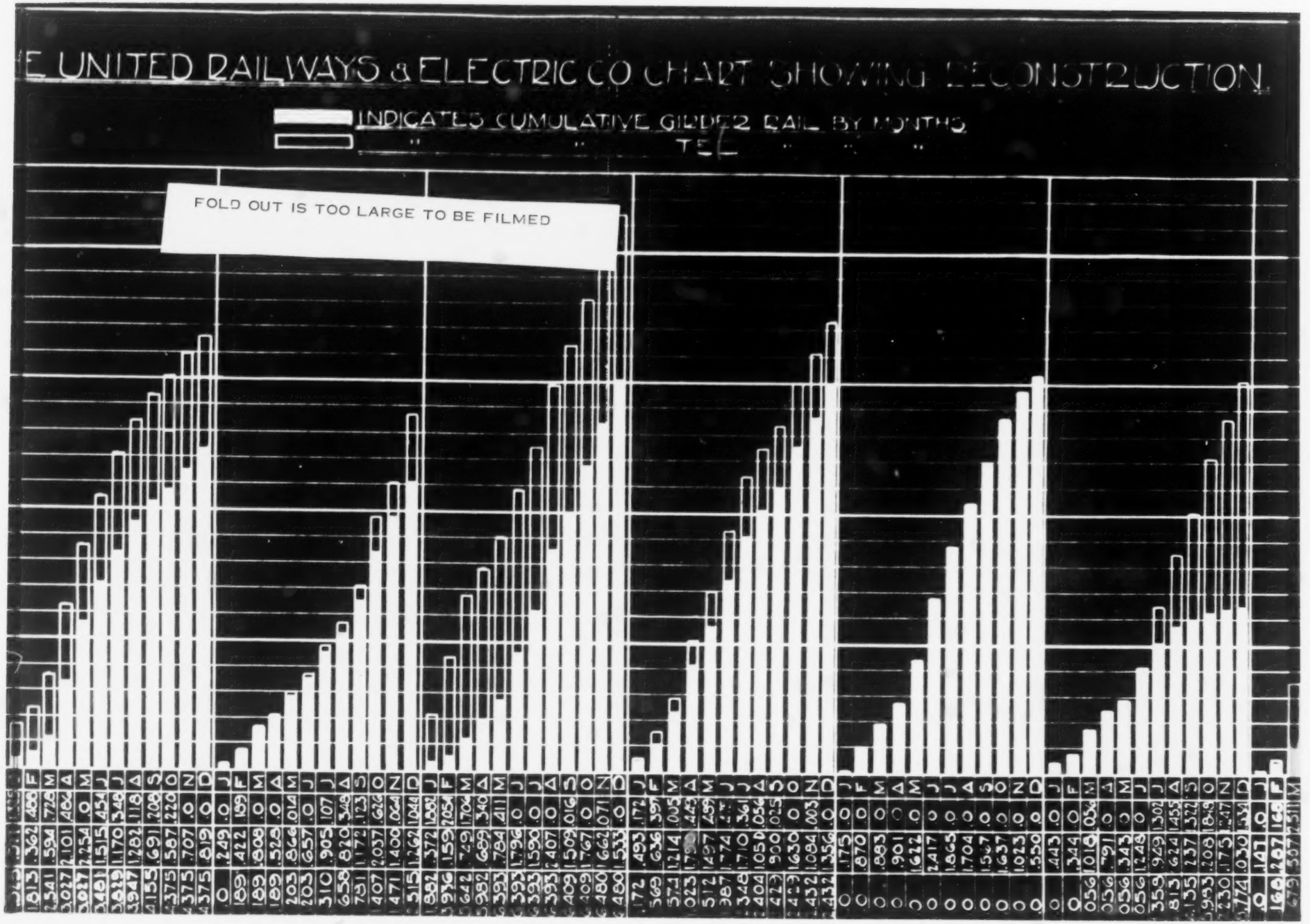
2% of $219,723 ..... $4,400.00.

Account 521—Distribution System.

This account is complicated with many different classes of equipment which are subjected to physical deterioration and functional extinguishment in varying degree, the subdivisional groups that must be considered separately being as follows:

FOLD OUT IS TOO LARGE TO BE FILMED




E UNITED RAILWAYS & ELECTRIC CO CHART SHOWING RECONSTRUCTION.
INDICATES CUMULATIVE GIRDER RAIL BY MONTHS
" " TEE " " "
FOLD OUT IS TOO LARGE TO BE FILMED

(a) Overhead Feeders
Inside City Limits
Outside City Limits

(b) Underground Cables, including submarine cables and pole top equipment.

(c) Trolley Wire Structures.

(d) Track Bonding.

(e) Miscellaneous Equipment.

(a) Overhead Feeders.

During the 10-year period between Jan. 1, 1914, and Jan. 1, 1924, approximately 387 miles of overhead feeders used for distributing 600 volt energy over the system were removed, practically in total from within the present City area, the retirements having been made largely by orders of Public authorities received from time to time as municipal conduit facilities were made available in the various urban sections for the installation of underground cables. An additional amount of 58 miles has been taken down on City thoroughfares since Jan. 1, 1924. Assuming that the remaining overhead feeders still in service within the present City limits, totaling approximately 204 miles, will be removed by demand of public authority and by abandonment at the average rate obtaining for the last 4 years of 14 miles a year, which is 14/32 of the actual average rate of extinguishment experienced during the past 14 years, practically all the present city feeders will be retired during the next 15 years. Inasmuch as the property will be extinguished gradually over the 15-year period, the average life will have to be considered as 7½ years, which gives an annual rate of about 13% to apply to the overhead feeders, less salvage, inside the City limits, as a result of functional extinguishment alone, which is the controlling factor in this instance. The 182 miles of overhead feeders in service, as of Oct. 1, 1927, outside the City limits presumably will not be superseded in the near future by underground cables, consequently, retirements should occur at an appreciably lower rate than in the case of the overhead feeders located within the City area. Taking into

account the combined factors of (1) obsolescence incident to abandonments, rerouting, and changing load centers, (2) physical deterioration, and (3) contingencies such as storm casualties; an over-all annual rate of 4% is considered reasonable to apply to the overhead feeder property located outside the City limits, less salvage.

A. (b) Underground Cables.

The first installation of underground cables on this system dates back 25 years to 1902, when the City began to force the removal of overhead feeders following the construction of the first municipally-controlled conduit lines. Experience so far has supplied no conclusive evidence from which the natural mortality rate of this class of underground cables can be determined. Relatively few replacements have been made as a result of physical deterioration, and these have in most cases resulted from failures of the lead sheathings, caused by localized electrolysis and by crystallization from vibration or from expansion and contraction. In view of the fact that the cables in general have not been worked beyond their normal safe ratings, there is every reason to expect a low mortality from natural causes.

It has long been realized, however, that natural mortality is not the predominating factor in the retirement of this class of property, which has been controlled so far almost entirely by obsolescence and inadequacy. For example, of the 136,000 feet of low-tension cable initially installed in 1902, only 21,000 feet (15%) remains in service today, 85% having been extinguished in 25 years, due to rerouting of car lines, the abandonment of Pratt Street power station as a d. c. load distributing center, the installation of new substations, shifting loads, etc. At this rate the entire original installation will have disappeared in 29 years. Analyzing the first 10 years' installation of underground cables, it is found that 70% of the original property has been removed in $\frac{10}{2} + 15 = 20$ years. At this rate the entire installation will be non-existent in 29 years after date of introduction. These figures of functional extinguishment may be checked with the experience of the past 10 years, dur-

ing which time about 420,000 feet of this class of cable has been pulled on account of obsolescence. Dividing the average amount of cable in service during this period by the average yearly removals indicates that the total property will be extinguished in

$$\frac{1{,}240{,}000}{42{,}000} \text{ 29.5 years.}$$

The above data indicates ultimate extinguishment by obsolescence within about 29 years, but as the retirements occur from time to time the average life must, therefore, be taken as 14½ years, giving an annual retirement rate of about 7% to apply to this property, after deducting net salvage.

(c) Trolley Wire Structures.

Trolley Wire Structures include, in addition to 433 miles of trolley wire for both tangent track and special work, a number of other elements such as cars, frogs, crossings, armor, span wires, suspension hangers, insulators and other miscellaneous fixtures, most of which parts are subjected to exceptionally severe usage both mechanically and electrically, and are particularly susceptible to casualty from storms, especially when attended by sleet.

Trolley Wire replacements during the past 10 years, exclusive of maintenance requirements for general repairs, have totaled 428 miles, which indicates an average life of 10 years. A mortality experience curve plotted from life data of all units taken individually for a complete life cycle approximates this figure, showing an average life of 11 years. However, improvements made in recent years in quality of material, methods, and higher standards of maintenance, should prolong the future average life beyond the records established by past experience. Although no substantiating data are available, it is believed that future renewals can be kept down to an average of about 30 miles of wire a year, which gives a rate for physical deterioration of 7%, less salvage.

In the case of cars, the average life has been extended by the employment of improved methods and materials from less than 2 years to 4 years, the retirement rate therefore being 25%, which will also cover such short-lived parts as frogs, crossings, section insulators, etc. Span wires are also beginning to indicate longer life than shown by past records, and it is estimated that replacements averaging 100,000 feet a year will cover future requirements.

Dividing the total quantity of approximately 1,000,000 feet in service by the estimated annual renewal, establishes an average life of 10 years, and gives a retirement rate of 10%.

Combining the above respective rates applying to the different groups of elements making up Trolley Wire Structures gives a resultant over-all weighted average rate of approximately 13%, which is increased to 14% to include abandonments chargeable to obsolescence.

(d) Track Bonding.

An average rate of 5% covering both physical deterioration and obsolescence is used to apply to track bonding, including the cutout cables shunting special work.

(e) Miscellaneous Equipment.

The items included under Miscellaneous Equipment comprise lighting arresters, automatic sectionalizing switches, cross-connecting switches, circuit breakers, lighting clusters and wiring, etc. By reason of the many complications incident to diversity of service and life for the various items, past records are too incomplete to establish, with any degree of exactness, the average life of the composite group. A rate of 10% to cover both physical deterioration and obsolescence is estimated as conservative.

Summarizing and tabulating the above five subdivisional groups, the over-all weighted average annual rate applicable to the base of "Account 521, Distribution System," is found to be 7.12%:

ACCOUNT 521—DISTRIBUTION SYSTEM

SUMMARY

Item	Prorated P. S. C. Undepreciated Value	Net Salvage Value	Net Depreciable Value	Annual Retirement Rate %	Annual Appropriation to Retirement Reserve
(a) Overhead Feeders Inside City Limits	$381,282	$115,000	$266,200	13	$34,600
Outside City Limits	291,071	74,000	217,100	4	8,700
(b) U. G. Cables..	1,905,449	468,000	1,437,400	7	100,600
(c) Trolley Wire Structures	737,261	60,000	677,300	14	94,800
(d) Track Bonding	170,738	14,000	156,700	5	7,800
(e) Miscellaneous Equipment	63,894		63,900	10	6,400
TOTALS	$3,549,645	$731,000	$2,818,600	..	$252,900

Weighted Average Rate = $\frac{252,900}{3,549,600} \times 100 = 7.12\%$ to be applied to undepreciated base.

Account 523—Shops and Carhouses.

This account is affected by track abandonments due to rerouting, replacements due to new types of cars, increasing fire hazards, changes in the methods of operation, such as the use of trailers, and by any other obsolescence or deterioration in buildings. The entire change in the growth of the city due to the automobile, which has occurred in the last few years, will, if continued for 20 years more, render much of this property obsolete because of location alone. An allowance of 2½% for replacements, i. e. assumption of an average life of 40 years, will certainly no more than protect this amount.

2½% of $4,350,000.....$108,700.00

Account 524—Stations, Miscellaneous Buildings & Structures.

These structures are replaced oftener than the ordi-

nary buildings because of the operations to which they are subjected. A larger allowance for retirements is necessary in this type of property because of substitutions of larger and more permanent structures. An allowance of 4% will no more than cover this replacement.

4% of $335,598 ..... $13,400.00

Account 526—Park & Resort Property.

The retirements of this type of property are quite heavy owing to the changes in what might be termed the amusement art and the character of use to which it is subjected. It is doubtful if 5% will adequately cover this requirement. This account does not include land.

5% of $510,877 ..... $25,500.00

Account 529—Other Expenditures, Way & Structures.

Trackless Trolley Construction.

This has already been written off and no allowance is claimed.

Accounts 530-531-532-533.

Passenger and Combination Cars	$11,486,901
Freight, Express & Mail Cars	49,829
Service Equipment	487,237
Electric Equipment of Cars	6,087,930
	$18,111,897

From the following table it will be at once apparent that of 1022 cars, which equal in number almost 70% of the total of 1470 cars now in use, the average life was only 15.8 years and that a large factor in the retirement of these cars was obsolescence. An average allowance of 4% for retirements will certainly not be excessive. It will probably be far too small. There is little salvage.

TABLE SHOWING WEIGHTED AVERAGE USEFUL LIFE OF 1022 CARS WITHDRAWN FROM SERVICE.

Number	Type	Approx. Year Purchased	Approx. Year Withdrawn Prior to	Weighted Average Life Years
173	S. T. Closed	1891 to 1896	Aug., 1905	12.6
120	S. T. Closed	1894 to 1897	Aug., 1905	12.1
113	S. T. Open	1894 to 1897	Feb., 1906	10.6
54	S. T. Closed	1892 to 1896	Sept., 1910	15.8
39	S. T. Closed	1894 to 1897	Jan., 1911	15.4
84	S. T. Open	1895 to 1897	Jan., 1911	14.7
29	S. T. Closed	1898	1914	16.0
88	D. T. Closed	1897	1915	18.0
48	S. T. Closed	1898	1915	17.0
20	S. T. Open	1896	1915	19.0
10	S. T. Open	1897	1915	18.0
91	S. T. Convt.	1898	1921	23.0
105	D. T. Convt.	1901	1921	20.0
110	D. T. Open	1902	1923	21.0
18	Birney Safety	1920	1926	6.0

Weighted average life of 1022 cars retired from service is 15.8 years.

Obsolescence and deterioration 4% of $18,111,897.....$725,000.00

This figure to cover both Obsolescence & Deterioration is probably too low, as we have retired on this property within the last few years cars whose useful life was below 6 years due to obsolescence alone.

Account 536—Shop Equipment.

Maintained through Maintenance.

Account 537—Furniture.

This account is ordinarily maintained through Maintenance.

Account 538—Miscellaneous Equipment.

Maintained through Maintenance.

Account 539—Power Plant Buildings.

This account falls in the same class as carhouses.

2½% of $45,500.....$1,100.00

Account 540—Substation Buildings.

This account falls in the same class as carhouses except that the equipment that it is built to house commonly is superceded much more frequently.

3% of $473,822 ..... $14,200.00

Account 542—Power Plant Equipment.

The only generating plant being operated is one located at Owings Mills, which has a total rated capacity of 1080 KW. in a number of small 600 volt d. c. generators driven by reciprocating engines.

A rate of 3% is applied to this property, which will not have any net salvage residue.

Annual appropriation required for reserve is therefore,

3% of $169,972 ..... $5,100.00

Account 543—Substation Equipment.

In the valuation of 1924, eight manually-operated synchronous converter substations at various locations and one transformer station at Bay Shore Park were included under his account. Since that time, four automatically operated substations have been added to the system.

No retirements of any of the major equipment units due to physical deterioration have occurred during the 24 years that the oldest ones have been in service on this system. From actual experience, therefore, natural life is still indeterminate. Obsolescence, however, has proved a far more important and active factor. For the proper operation of the railway system it is essential to maintain power sources at strategic load distributing centers, but these locations do not remain fixed because as the community develops and changes, the centers of load are correspondingly affected, necessitating a redesign or rearrangement of the power system. To illustrate this point, in former years the entire system was supplied with energy from eleven steam stations located at the various load centers then prevailing, but such was the

subsequent development that only one of the present-day substations, which superceded the old steam plants, was built on a site formerly occupied by a power station, the locations selected for the other stations being, in most cases, far removed from the old power station sites. To cite a more recent example, the rapid development of the northern section of the City has created a most urgent necessity of establishing new centers of feed, and when substations are erected at these points a large part of the equipment in certain of the existing substations have become obsolete, after an average life of about 20 years.

Developments in the art have also exerted and will continue to exert, a material influence causing obsolescence: witness (1) the supercession by the synchronour converter substations of the isolated power plants less than 25 years ago; (2) the present growing popularity of the automatic substation, which is fast replacing the manually-operated type generally over the country; and (3) the very recent development and commercial exploitation of the mercury arc rectifier unit in place of the synchronous converter unit.

Obsolescence estimated on the basis of actual experience incident to changing system conditions and shifting load centers, etc., is sufficient cause alone to justify an annual retirement charge of not less than 4% to apply to this account. Developments in the art would tend to increase this rate, and, although, it is partly compensated for by omitting the comparatively small scrap residue in the existing equipment.

Using the rate of 4% for this account, the annual appropriation to the reserve on the undepreciated base of 1924 (which does not include the new automatic substations) is,

4% of $1,837,859 ..... $73,500.00

Account 544—Transmission System.

This account includes the 13200-vole underground cables, which are the arteries supplying a. c. energy to the various substations; and also the 13200-volt aerial

transmission lines extending from Eastern Substation to Bay Shore Park.

The first 13200-volt underground transmission cable was installed on this system in 1903 and is still in operation, giving satisfactory service along with several other cables almost equally as old. There have been practically no retirements due to deterioration or decrepitude, and experience to date is, therefore, no criterion as to natural life. But as in the case of the Substations, (see Acct. 543) supplied by these cables, obsolescence has been the predominating factor in the causes of retirements.

During the past 10 years approximately 75,000 feet of this class of cable has been removed and retired due entirely to obsolescence. If the average amount in service during this period is divided by the average annual abandonments during the same time, the result indicates the ultimate extinguishment of the property in

$$\frac{347{,}000}{7{,}500} = 46 \text{ years.}$$

The retirements, however, occur from time to time, and, consequently, the average life must be taken as 23 years, which results in an average retirement rate of 4⅓%.

In regard to the aerial lines to Bay Shore Park, which are carried on wooden poles, a rate of 7% is considered reasonable. Applying, as follows, the above rates to the respective sections of the account, after deducting scrap residue, results in an annual over-all weighted average rate on the total base of 3¾%.

Underground Transmission

Prorated P. S. C. Value—1924	$660,100
Less scrap residue	125,500
	$534,600
4⅓% annual charge	$23,200

Bay Shore Transmission

Prorated P. S. C. Value—1924	$57,946
Less scrap residue	3,800
	$54,146
7% annual charge	$3,800
TOTAL ANNUAL CHARGE	$27,000

Over-all weighted average rate:

$$\frac{27{,}000}{660{,}100 \quad 57{,}946} \times 100 \quad 3\tfrac{3}{4}\%.$$

To apply to the total base of account 544.

TOTAL ..... $2,149,200.00.

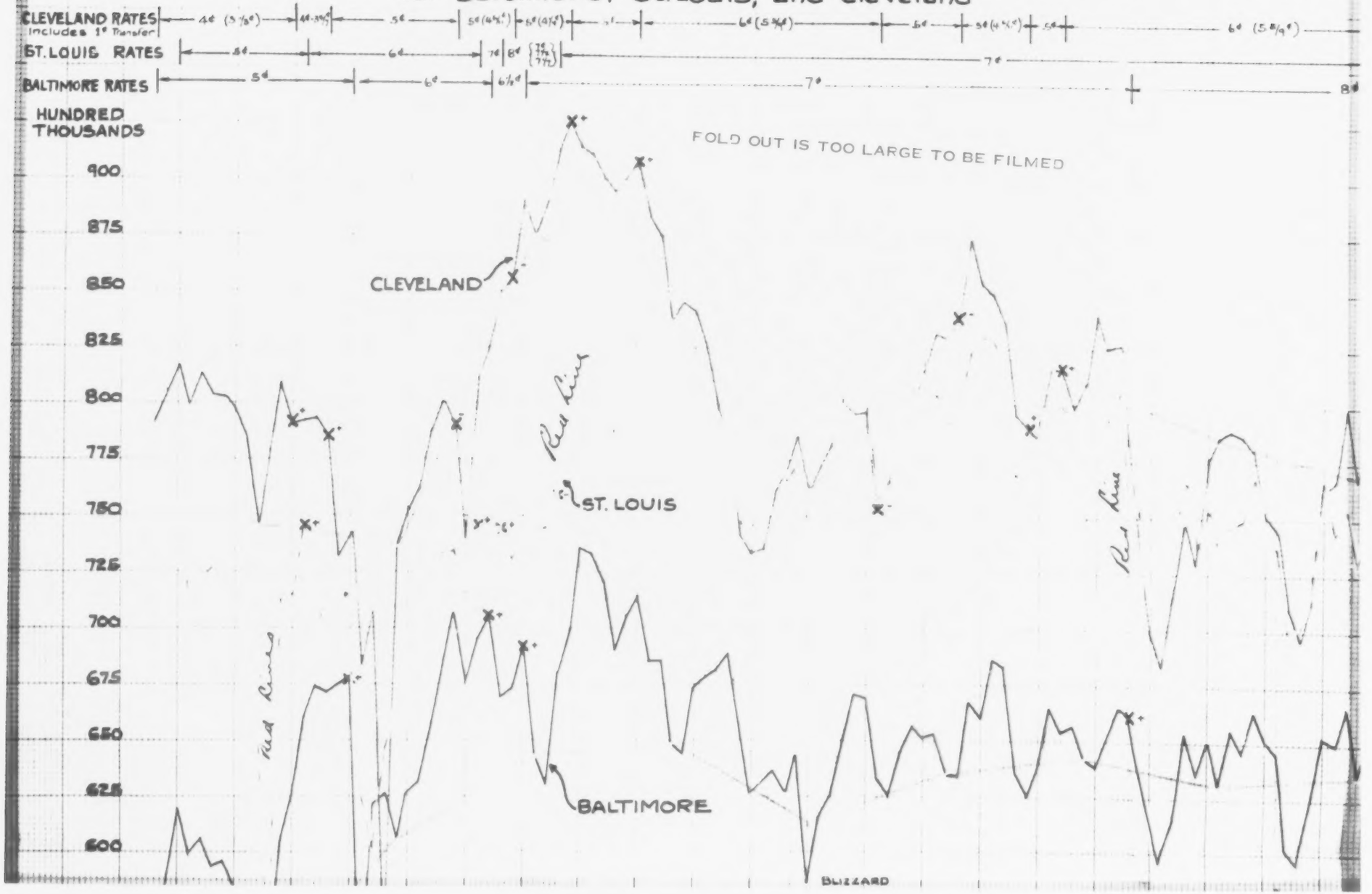
This is 4% on our undepreciated depreciable property. The three previous cycles through which street railway transportation has passed would indicate at least 5% due to obsolescence alone. It would appear, therefore, that 4% is probably too low, but if we use this figure and add to it the result of applying it to the $1,000,000 net additions in the last three years, we have an annual replacement and retirement charge of $2,200,000. This is checked by the testimony of Mr. Zimmerman, a man of large and varied experience in the operation of Street Railways, that the depreciation should be about 5% on the depreciable property.

The above percentage, if applied to the property in question at its present day undepreciated value plus the value of all plant additions made out of appropriations for depreciation and obsolescence, will maintain the property in its present condition. It will not build up any surplus fund against any catastrophe such as the Baltimore Fire or any major change in the art such as occurred to the cable roads.

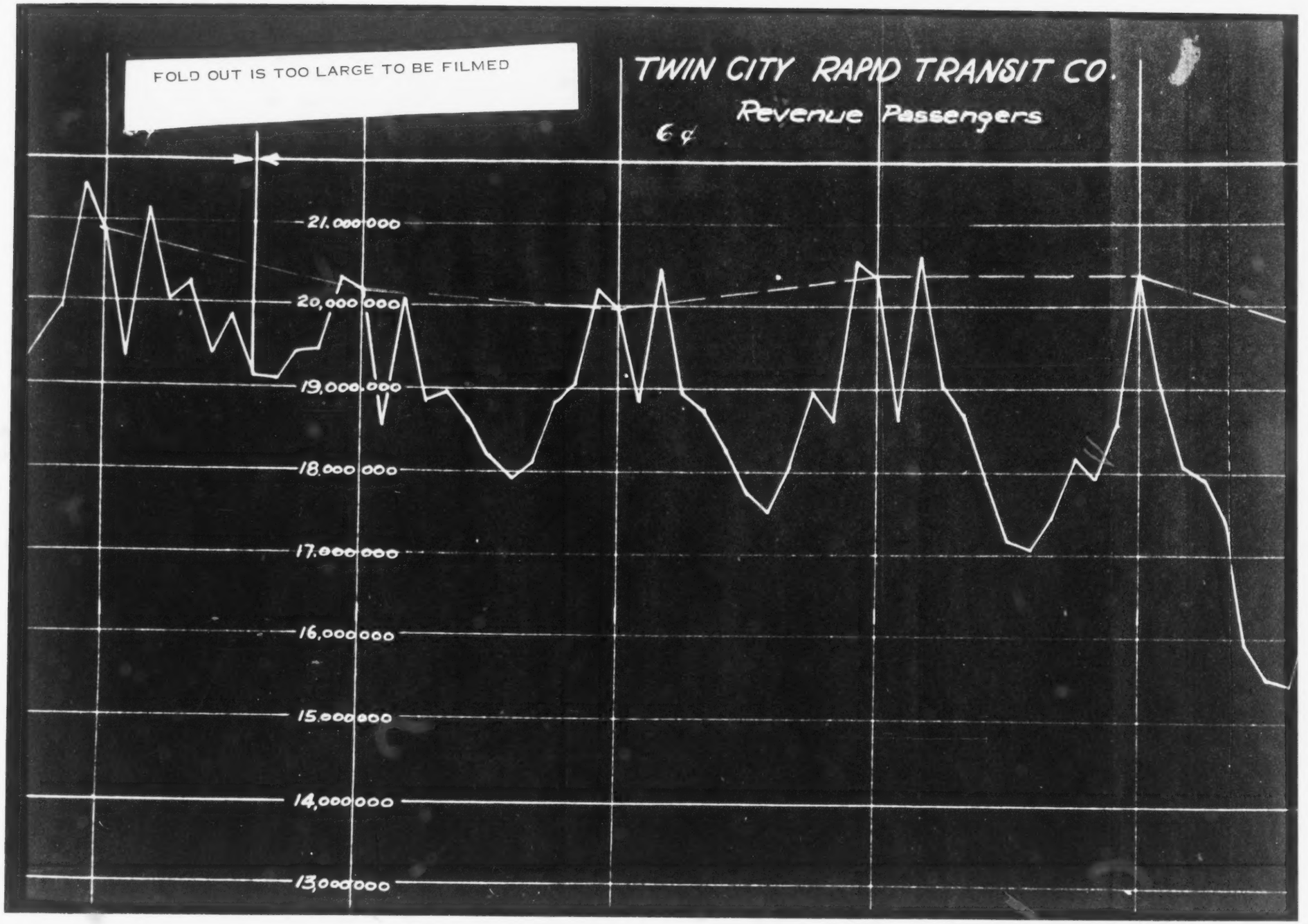
Respectfully submitted,

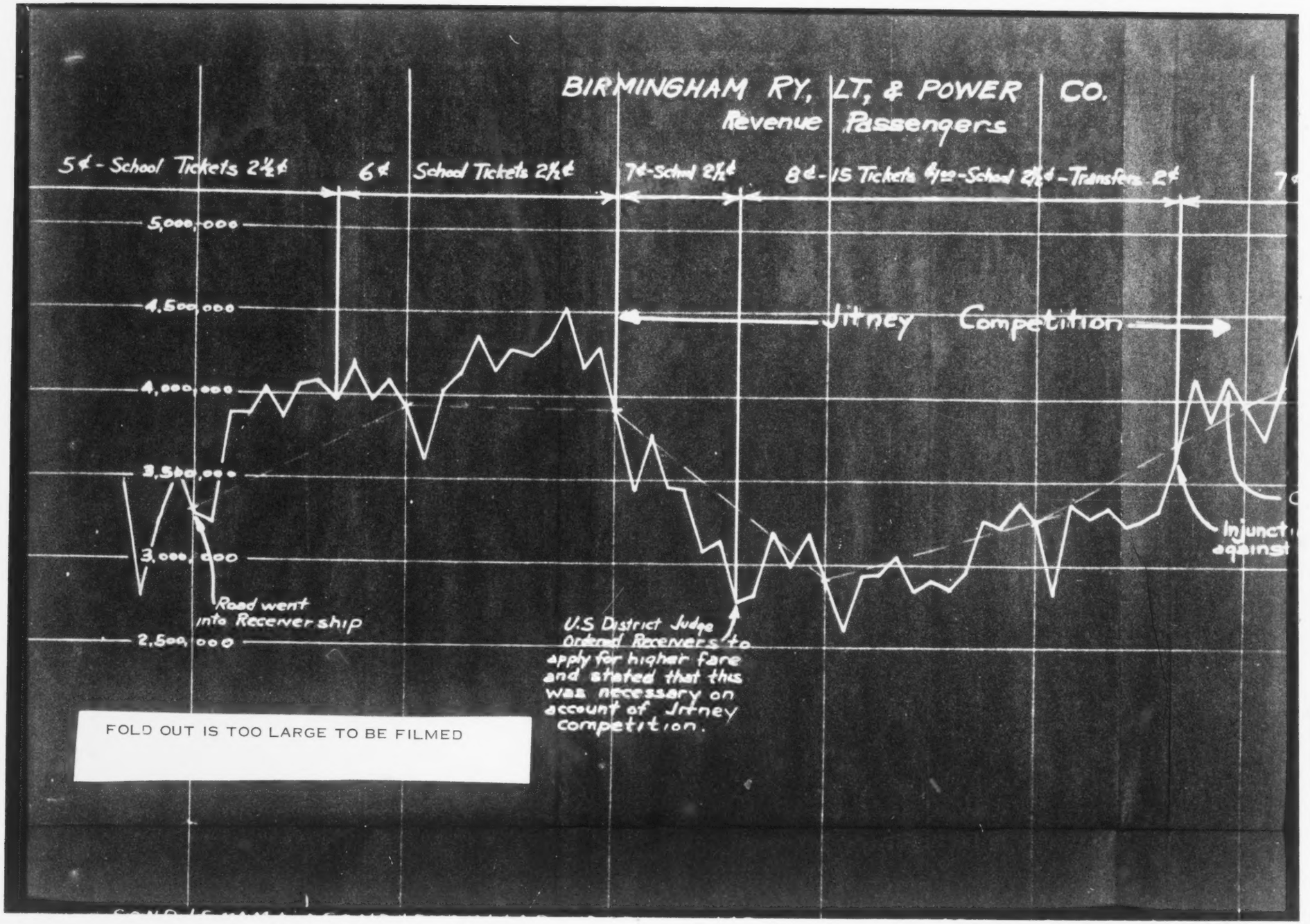
Valuation Engineer.

Comparison of Daily Averages of Revenue Passengers and Change in Rates of Fare for Baltimore, St. Louis, and Cleveland

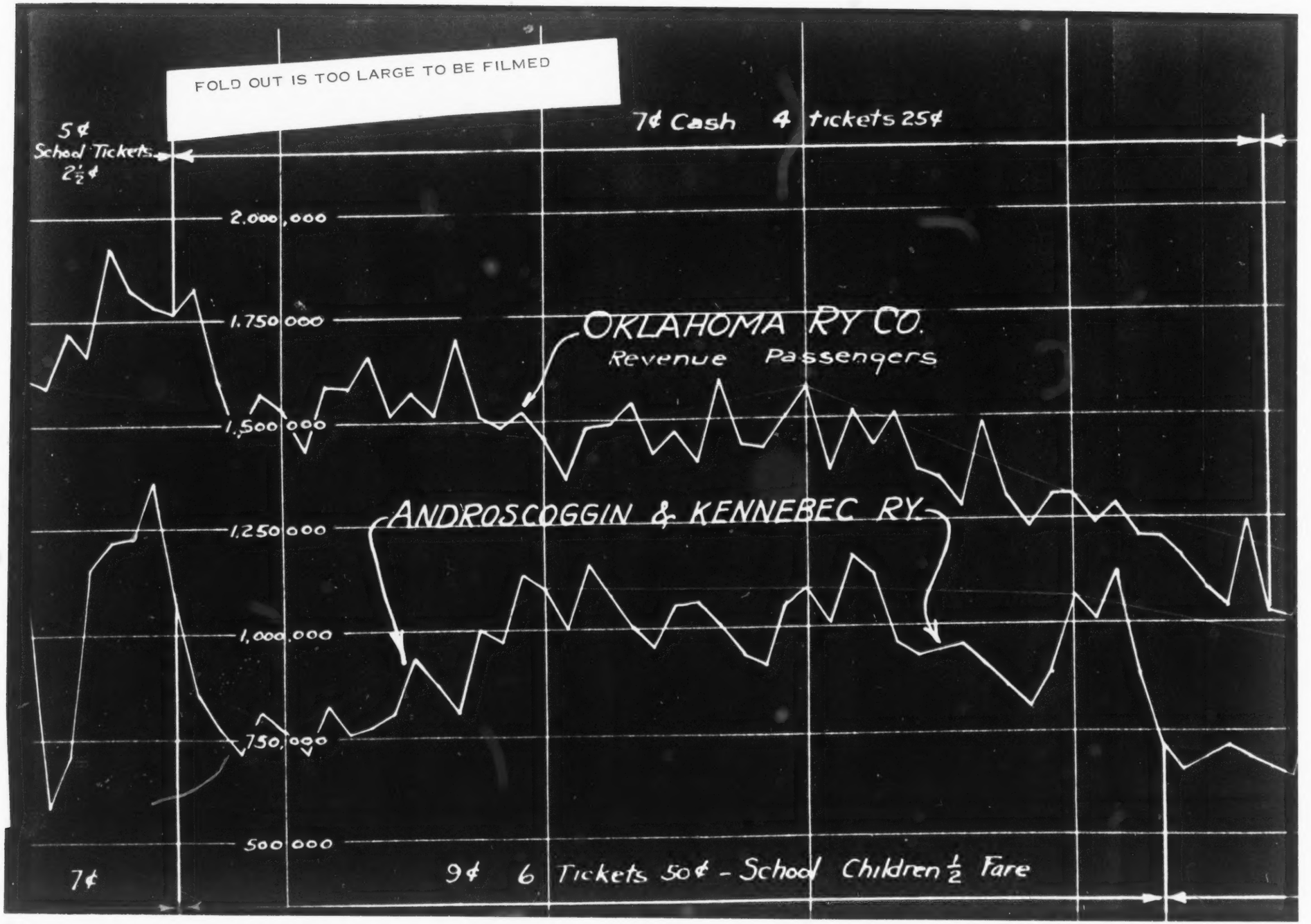


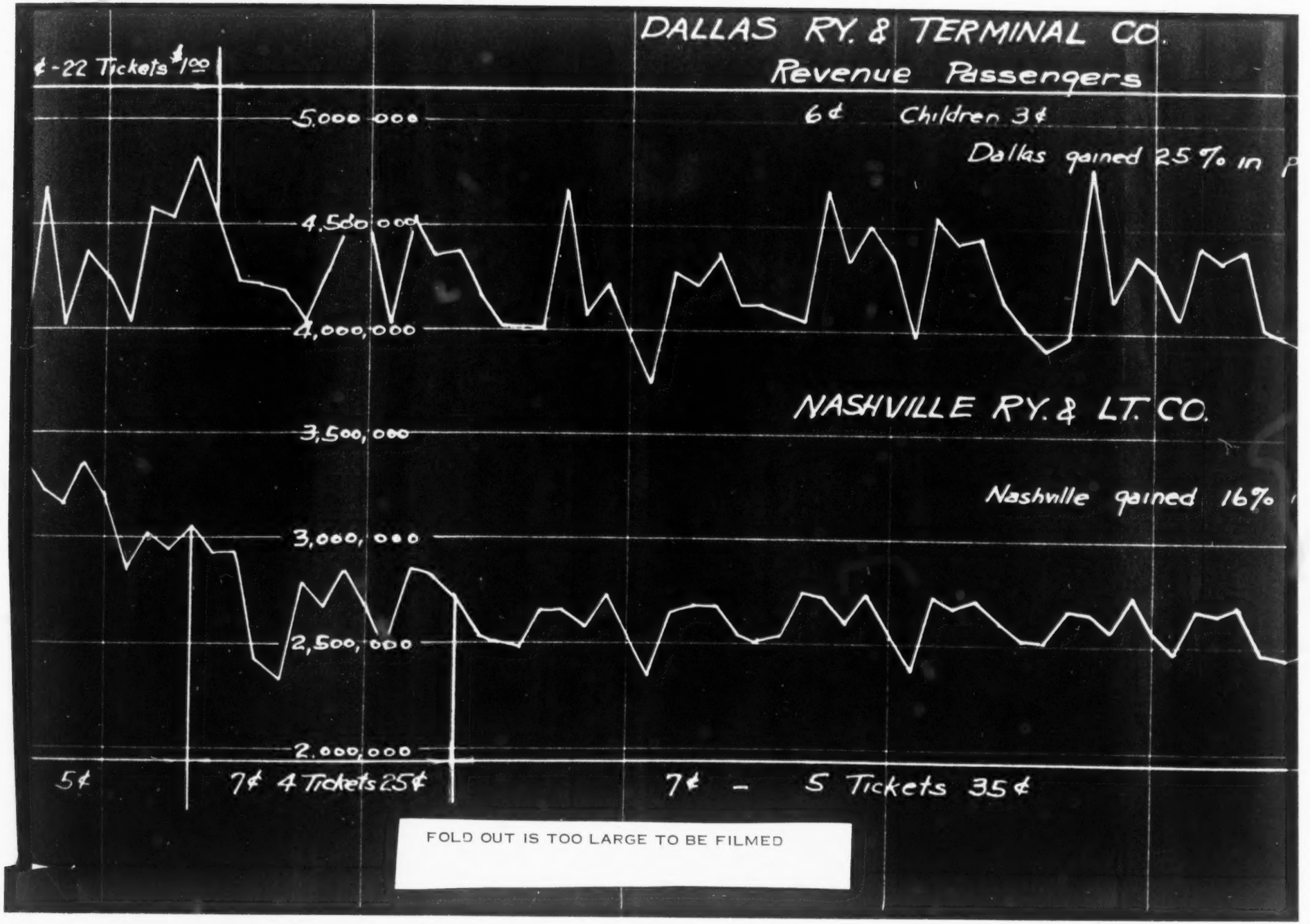
FOLD OUT IS TOO LARGE TO BE FILMED

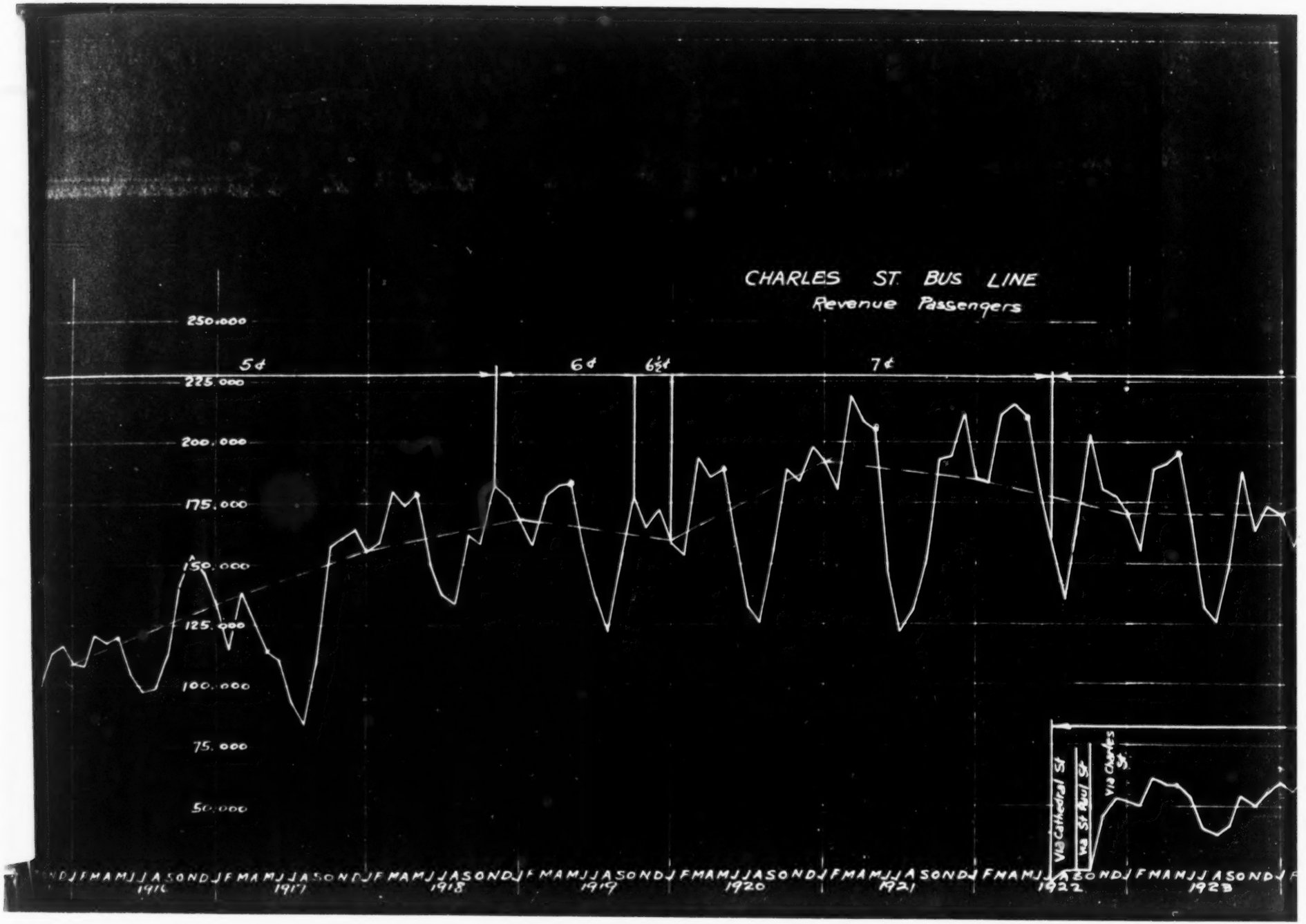


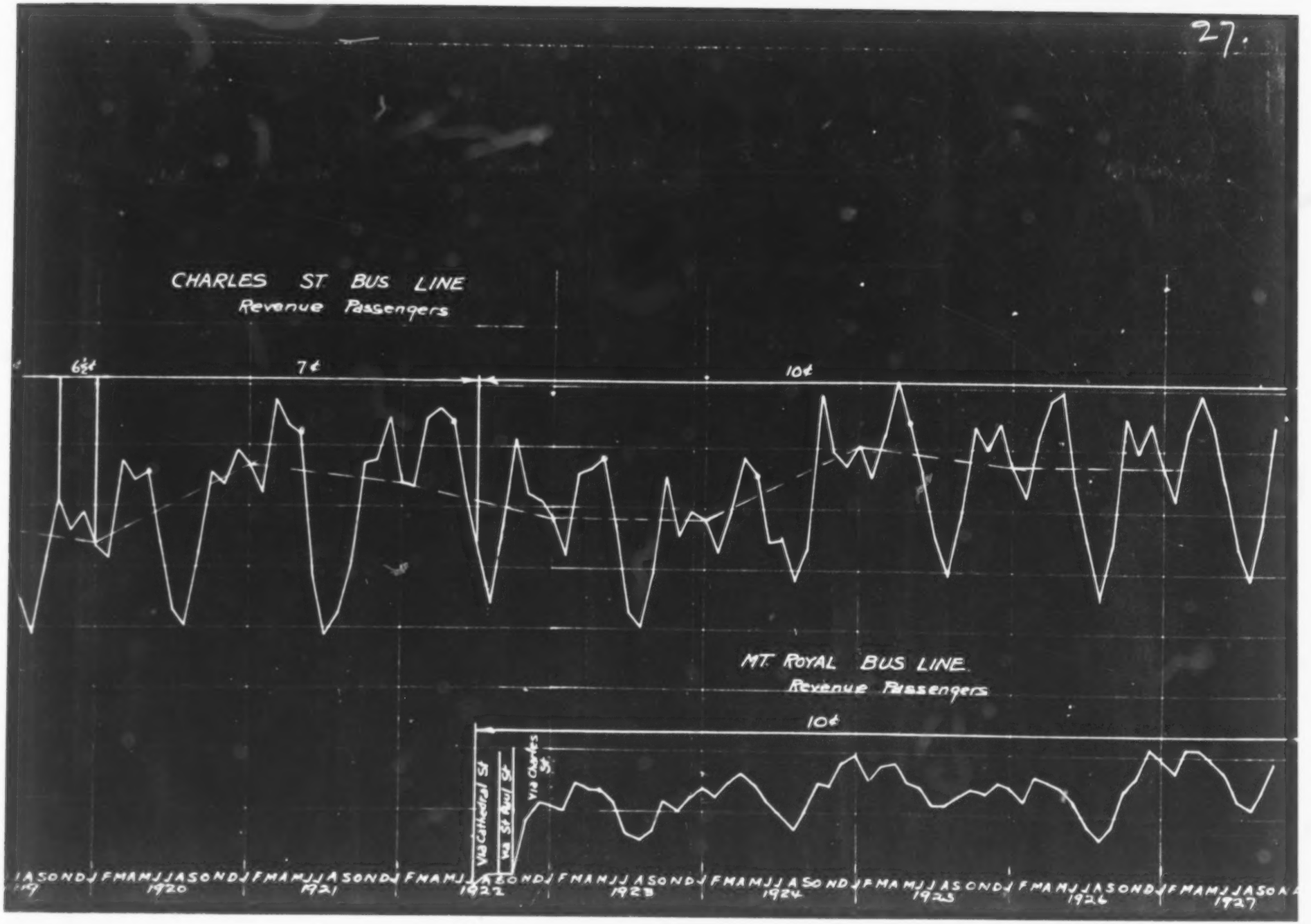


FOLD OUT IS TOO LARGE TO BE FILMED


FOLD OUT IS TOO LARGE TO BE FILMED
5¢ School Tickets 2½¢
7¢ Cash 4 tickets 25¢
2,000,000
1,750,000
1,500,000
1,250,000
1,000,000
750,000
500,000
OKLAHOMA RY CO.
Revenue Passengers
ANDROSCOGGIN & KENNEBEC RY.
7¢
9¢ 6 Tickets 50¢ - School Children ½ Fare


DALLAS RY. & TERMINAL CO.
Revenue Passengers
¢-22 Tickets $1.00
6¢ Children 3¢
Dallas gained 25% in
5,000,000
4,500,000
4,000,000
NASHVILLE RY. & LT. CO.
Nashville gained 16%
3,500,000
3,000,000
2,500,000
2,000,000
5¢
7¢ 4 Tickets 25¢
7¢ - 5 Tickets 35¢
FOLD OUT IS TOO LARGE TO BE FILMED


CHARLES ST. BUS LINE
Revenue Passengers
250,000
225,000
200,000
175,000
150,000
125,000
100,000
75,000
50,000
5¢
6¢
6½¢
7¢
Via Cathedral St
Via St Paul St
Via Charles St
1916
1917
1918
1919
1920
1921
1922
1923


CHARLES ST BUS LINE
Revenue Passengers
6¼¢
7¢
10¢
MT. ROYAL BUS LINE
Revenue Passengers
10¢
Via Cathedral St
Via St Alexis St
Via Charles St
J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M A M J J A S O N
1919
1920
1921
1922
1923
1924
1925
1926
1927

NUMBER OF PASSENGERS CARRIED ON THE CHARLES STREET

	1915	1916	1917	1918	1919	1920	1921	192
January		109304	133794	156185	168259	158530	192783	1857
February		108872	115826	159754	156168	153973	181073	1841
March		120637	138204	180106	178745	193658	219241	2121
April		118882	126352	174602	182279	188473	209920	2165
May		120075	119270	179547	183900	189121	205382	2117
June		105877	110805	151071	157760	160306	148680	1805
July	9886	98370	93356	137706	136378	132711	122486	1575
August	53286	99569	84446	133922	123866	125564	131586	1380
September	85189	113641	109762	160267	154416	156776	153164	1657
October	104460	142208	157772	158243	177385	188935	193199	2039
November	114076	154410	160717	182110	166548	184626	194748	1814
December	117930	147587	164780	178282	172191	197605	212882	1780
TOTAL	484,827	1,438,932	1,515,084	1,950,255	1,958,915	2,028,285	2,155,150	2,214,6

FOLD OUT IS TOO LARGE TO BE FILMED

FARE RATES.

From July 25, 1925 to Nov. 9, 1918 ----- 5.0¢

NUMBER OF PASSENGERS CARRIED ON THE CHARLES STREET ROUTE.

EXHIBIT NO.

917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927
794	155185	168299	158550	192785	185742	171945	170263	201851	195938	193817
826	159754	156168	153975	181073	184197	155774	157590	188692	181329	180966
204	180106	178745	193658	219241	212196	189852	174566	205599	205428	209567
552	174602	182279	188473	209920	216550	191004	196854	227168	220213	223409
270	179547	183900	189121	205382	211730	195499	189516	211472	224402	210944
806	151071	157760	160506	148690	180384	167726	162105	191751	185650	187205
356	137708	136578	132711	122486	157590	132041	163058	164144	163825	161138
446	133922	123866	126564	131588	136047	126217	145622	148711	139220	148123
762	160267	154416	156776	153164	165765	148168	158365	173872	162884	171793
772	158243	177385	188935	193199	203982	187392	222663	209383	215334	210186
717	182110	166548	184626	194748	181403	164482	198051	199965	199102	
780	178282	172191	197606	212882	178042	174438	193152	211253	210821	
,084	1,960,255	1 ,958,915	2,028,285	2,155,150	2,214,618	2003536	2131805	2,333941	2301146	1897148

FARE RATES.

25, 1925 to Nov. 9, 1918 ----- 5.0¢

9, 1918 to Sept. 30, 1918 ----- 4.0¢

November 21

EXHIBIT N

27-b 27

MOUNT ROYAL AVENUE BUS LINE

PASSENGERS CARRIED

	MONTH	1922	1923	1924	1925	1926	1927	
	January		52,843	59,200	74,358	60,990	72,882	
	February		50,090	55,685	63,711	56,719	67,362	
	March		61,841	62,853	69,678	66,376	78,121	
	April		59,602	65,174	70,045	64,735	77,838	
	May		58,963	61,343	63,589	61,542	73,565	
	June		53,476	54,448	61,460	55,753	68,426	
	July	18,994	40,342	49,078	54,523	46,393	57,265	
Via Cathedral st.	August	22,872	37,982	43,120	54,021	40,458	54,495	
	September	22,957	43,390	50,472	58,035	46,966	60,918	
Via St. Paul st.	October	23,176	54,591	62,695	60,941	61,543	73,465	
Via Charles st.	November	45,348	50,068	61,598	58,083	65,343		
	December	53,720	56,720	70,308	63,619	77,126		
	Total	187,067	619,908	695,974	752,063	703,944	684,337	3,643,293

Note: Line started July 15, 1922
Fare since inauguration has been 10¢

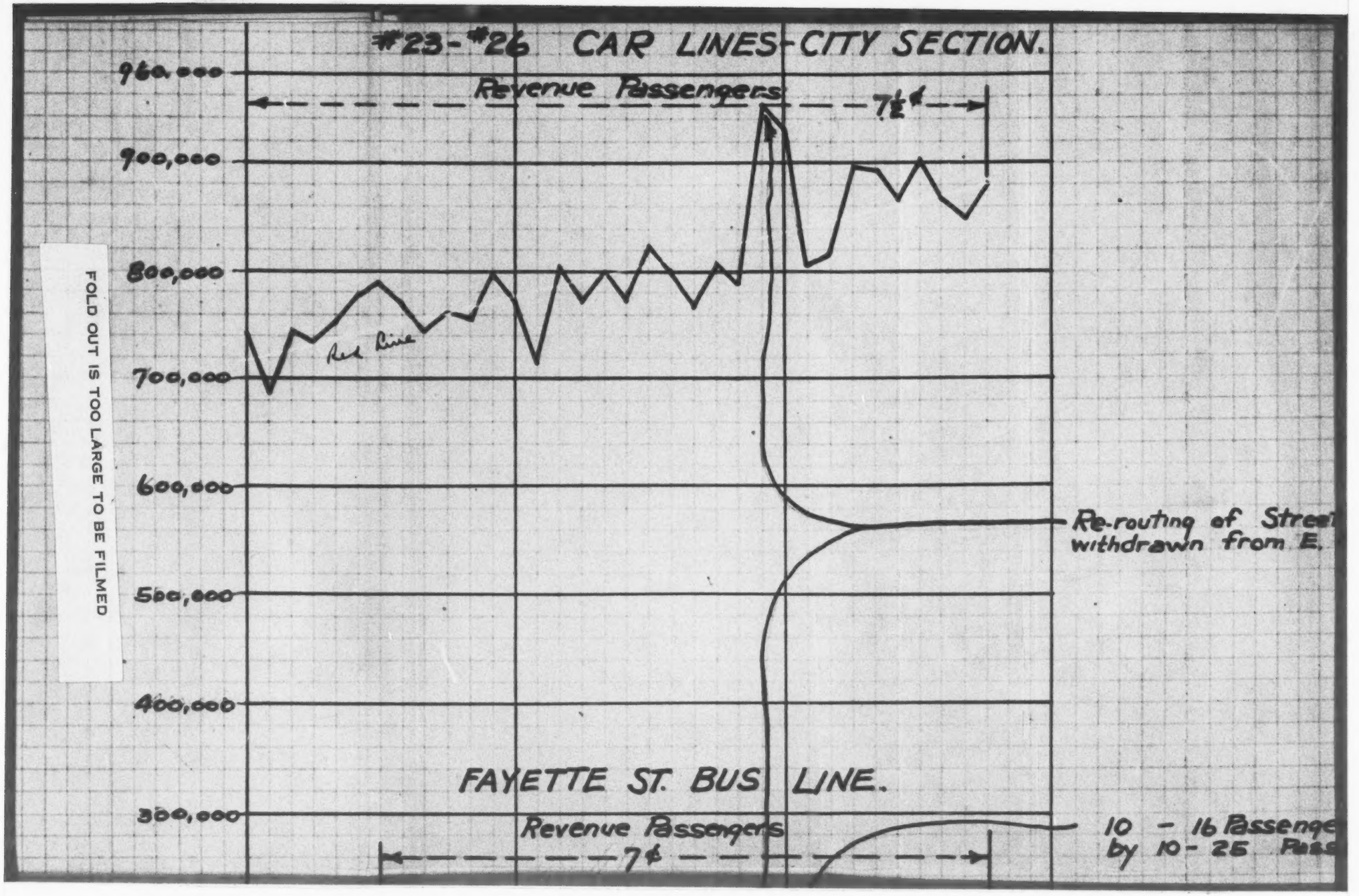

#23-#26 CAR LINES-CITY SECTION.
Revenue Passengers
7½¢
900,000
800,000
700,000
600,000
500,000
400,000
300,000
Red Line
Re-routing of Street
withdrawn from E.
FAYETTE ST. BUS LINE.
Revenue Passengers
7¢
10 - 16 Passenge
by 10-25 Pass
FOLD OUT IS TOO LARGE TO BE FILMED

EXHIBIT NO. 30

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE.

Gallons of motor vehicle fuel sold or used in the State of Maryland; as computed from receipts into the Treasury of Maryland from the Motor Vehicle Fuel Tax.

	Gallons	Increase Over Preceding Period	% Inc.
Year ended Oct. 31, 1923	67,330,300		
" " " 31, 1924	85,356,950	18,026,650	26.77
" " " 31, 1925	97,032,800	11,675,850	13.68
" " " 31, 1926	107,844,800	10,812,000	11.14
" " " 31, 1927	120,987,300	13,142,500	12.19
Increase - 1927 over 1923 - - - - - - - - -		53,657,000	79.69

---

6 Mos. - May to October Inclusive			
1926 - Tax @ 2 cts. per gallon	59,463,200		
1927 - Tax @ 4 cts. " "	64,331,650	4,868,450	8.19

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

STATEMENT SHOWING THE COST OF FINANCING BY THE UNITED RAILWAYS AND ELECTRIC COMPANY AND ITS SUBSIDIARIES,

FOR THE YEARS 1920 - 1927 INCLUSIVE

[illegible]		AMOUNT OF ISSUE	LESS BANKER'S COMMISSION	REMAINDER	LESS DISCOUNT TO PUBLIC	REMAINDER	LESS EXPENSE PAID BY COMPANY	NET PROCEEDS RECEIVED BY COMPANY	COST [illegible] COMPA[illegible]
[illegible]	United Railways & Electric Co. [illegible] Gold Certificates [illegible] (Retired)	875,000	43,750	831,250	None	831,250	3,319.77	[illegible]	[illegible]
[illegible]	United Railways & Electric Co. [illegible] Gold Notes [illegible] (Retired)	1,500,000	90,000	1,410,000	26,250	1,[illegible]	[illegible]	1,[illegible],361.02	*8.70
[illegible]	United Railways and Electric Co. First Consolidated Mortgage, 6s [illegible]	6,000,000	270,000	5,730,000	180,000	5,550,000	108,[illegible]	5,441,160.69	6.7[illegible]
Mar. 1, [illegible]	United Railways & Electric Co. [illegible] per $1,000. bond [illegible] $2,684,000. first consolidated mortgage do to secure additional 3% interest coupon	671,000	28,903	642,097	-	642,097	10,973.62	631,123.[illegible]	6.60[illegible]
Aug. 1, [illegible]	United Railways & Electric Co. [illegible] 8% Gold Notes [illegible] August 1, 1927 (Retired)	2,500,000	75,000	2,425,000	50,000	2,375,000	6,331.96	2,368,668.04	7.27[illegible]
Jan. 1, [illegible]	The Maryland Electric Rwys. Co. First and Refunding Mortgage Gold Bonds; Series "A" - 6½% [illegible] January 1, 1957	4,000,000	210,000	3,790,000	None	3,790,000	9,722.00	3,780,278.00	6.95[illegible]
Jan. 1, [illegible]	The Maryland Electric Rwys. Co. First and Refunding Mortgage Gold Bonds; Series "B" - 6½% [illegible] January 1, 1962	NONE	-	-	-	-	-	-	-
Mar. 1, [illegible]	United Railways & Electric Co. Three year, 8% Gold Notes [illegible] March 1, 1930	2,500,000	62,500	2,437,500	18,750	2,418,750	6,140.85	2,412,609.15	7.[illegible]

*Not considering call, this cost is as if retired at maturity.

31

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

STATEMENT SHOWING THE COST OF FINANCING BY THE UNITED RAILWAYS AND ELECTRIC COMPANY AND ITS SUBSIDIARIES

FOR THE YEARS 1920 - 1927 INCLUSIVE

	AMOUNT OF ISSUE	LESS BANKER'S COMMISSION	REMAINDER	LESS DISCOUNT TO PUBLIC	REMAINDER	LESS EXPENSE PAID BY COMPANY	NET PROCEEDS RECEIVED BY COMPANY	COST OF MONEY TO COMPANY	MARKET YIELD	PRICE TO BANKERS	MARKET PRICE
...& Electric Co. ...old Certificates ... (Retired)	875,000	43,750	831,250	None	831,250	3,319.77	827,930.23	*9-3/8%	8.00%	95	100
...& Electric Co. ...old Notes ...(Retired)	1,500,000	90,000	1,410,000	26,250	1,383,750	3,[illegible]	1,380,361.02	*8.70%	7.72%	92¼	98¼
...and Electric Co. ...old Mortgage, 6s ...	6,000,000	270,000	5,730,000	180,000	5,550,000	108,[illegible]	5,441,160.69	6.75%	6.23%	92½	97
...& Electric Co. ...o. per $1,000. bond ...$2,[illegible],000. first ...ortgage 6s to secure ...interest coupon	671,000	28,903	642,097	-	642,097	10,973.62	631,123.28	6.60%	-	95.7	-
...& Electric Co. ...old Notes ...1927 (Retired)	2,500,000	75,000	2,425,000	50,000	2,375,000	6,331.96	2,368,668.04	7.27%	6.48%	95	98
...lectric Buys. Co. ...nding Mortgage ...ries "A" - 6½% ... 1927	4,000,000	210,000	3,790,000	None	3,790,000	9,722.00	3,780,278.00	6.93%	6.50%	94¾	100
...lectric Buys. Co. ...nding Mortgage ...ries "B" - 6½% ... 1962	NONE	-	-	-	-	-	-	-	-	-	-
...& Electric Co. ...old Notes ...730	2,500,000	62,500	2,437,500	18,750	2,418,750	6,140.85	2,412,609.15	7.32%	6.28%	96¾	99½

*This cost is as if retired at maturity.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

PASSENGER RECEIPTS - ACTUAL DAY BY DAY COMPARISONS - NOVEMBER 1927 WITH NOVEMBER 192

(INCLUDING CHARTERED CARS).

FOLD OUT IS TOO LARGE TO BE FILMED

Day	1927	1926	PASSENGER RECEIPTS 1927	1926	Increase	Decrease	Per Cent Inc.	Per Cent Dec.	WEAT 1927 AM	1927 PM
		November 1		$53,891						
Tuesday	November 1	November 2	$47,788	$47,158	$ 630	$	1.34		C	C
Wednesday	" 2	" 3	47,245	48,707		1,462		3.00	Cl	Cl
Thursday	" 3	" 4	44,564	47,746		3,182		6.66	R	R
Friday	" 4	" 5	47,353	48,732		1,379		2.83	Cl	Cl
Saturday	" 5	" 6	52,047	55,930		3,883		6.94	Cl	C
Sunday	" 6	" 7	25,331	30,111		4,780		15.87	C	C
Monday	" 7	" 8	49,394	51,129		1,735		3.39	C	Cl
Tuesday	" 8	" 9	46,106	48,528		2,422		4.99	Cl	R
Wednesday	" 9	" 10	46,654	48,691		2,037		4.18	Cl	C
Thursday	" 10	" 11	45,842	46,267		425		.92	Cl	Cl
Friday	" 11	" 12	45,626	48,890		3,264		6.66	PCl	PCl
Saturday	" 12	" 13	51,104	55,345		4,241		7.66	PCl	C
Sunday	" 13	" 14	26,249	28,302		2,053		7.25	C	C
Monday	" 14	" 15	48,798	50,857		2,059		4.05	C	C-Cl
Tuesday	" 15	" 16	46,388	43,399	2,989		6.89		Cl	C
Wednesday	" 16	" 17	46,128	50,067		3,939		7.87	Cl	Cl
Thursday	" 17	" 18	44,060	47,016		2,956		6.29	Cl	R
Friday	" 18	" 19	46,457	48,436		1,979		4.09	Cl	C
Saturday	" 19	" 20	52,031	54,929		2,898		5.28	C	C
Sunday	" 20	" 21	24,992	25,969		977		3.76	C	C
Monday	" 21	" 22	48,300	51,303		3,003		5.85	Cl	R
Tuesday	" 22	" 23	46,999	48,845		1,846		3.78	PCl	C
Wednesday	" 23	" 24	48,469	50,735		2,266		4.47	Cl	Cl
Thursday	" 24	" 25	28,845	31,184		2,339		7.50	PCl	PCl
Friday	" 25	" 26	(Est) 45,671	47,127		1,456		3.09	Cl	Cl

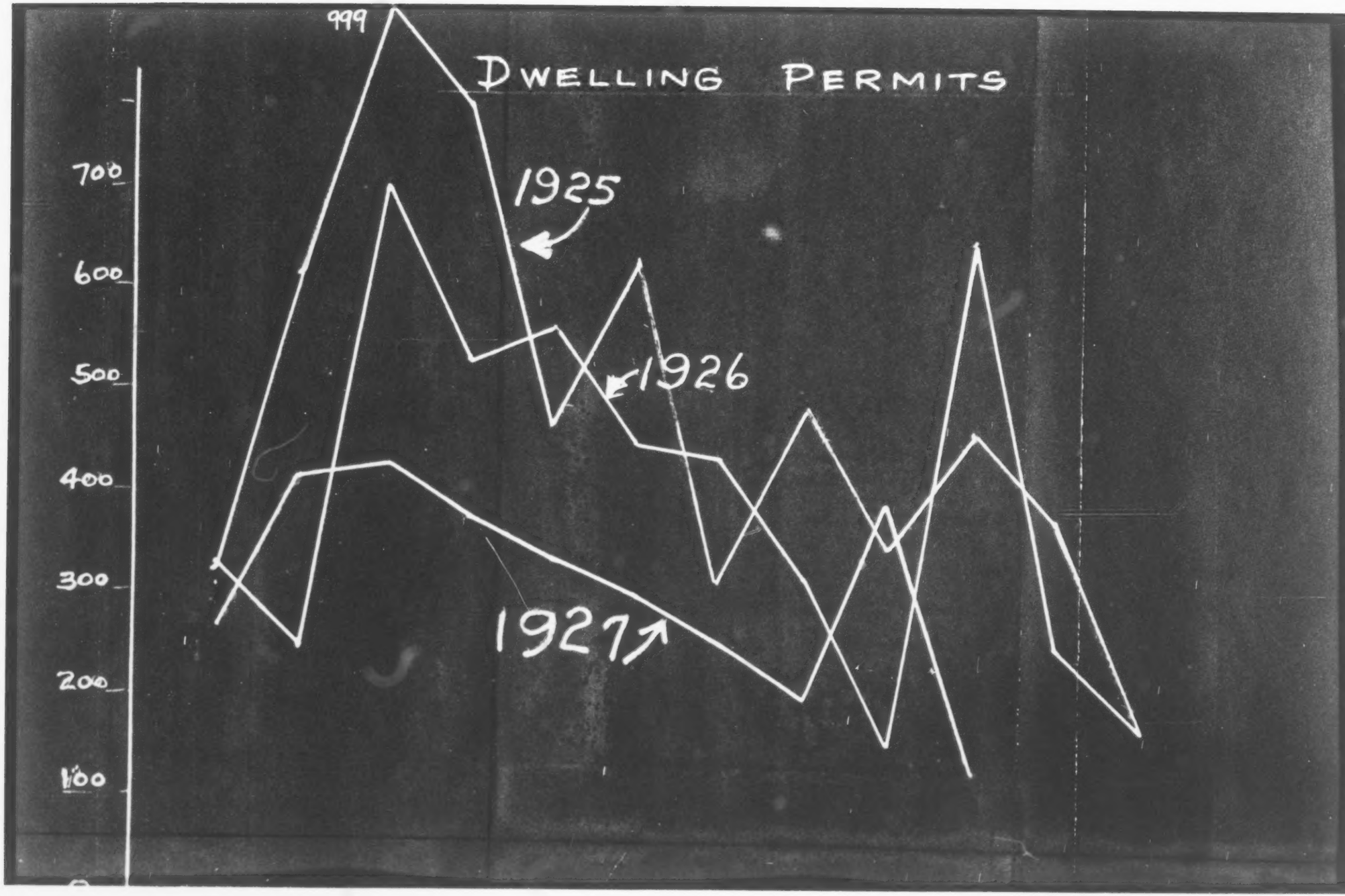
EXHIBIT NO.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

PASSENGER RECEIPTS - ACTUAL DAY BY DAY COMPARISONS - NOVEMBER 1927 WITH NOVEMBER 1926

(INCLUDING CHARTERED CARS).

1926		PASSENGER RECEIPTS 1927	PASSENGER RECEIPTS 1926	Increase	Decrease	Per Cent Inc.	Per Cent Dec.	WEATHER 1927 AM	WEATHER 1927 PM	WEATHER 1926 AM	WEATHER 1926 PM	TEMPERATURE 1927 AM	TEMPERATURE 1927 PM	TEMPERATURE 1926 AM	TEMPERATURE 1926 PM
November	1		$53,891							C	C			52	37
November	2	$47,788	$47,158	$ 630	$	1.34		C	C	C	Cl	72	50	51	41
"	3	47,245	48,707		1,462		3.00	Cl	Cl	Cl	C	72	54	49	37
"	4	44,564	47,746		3,182		6.66	R	R	C	C	64	43	50	33
"	5	47,353	48,732		1,379		2.83	Cl	Cl	C	C	51	40	54	40
"	6	52,047	55,930		3,883		6.94	Cl	C	C	C	54	38	59	35
"	7	25,331	30,111		4,780		15.87	C	C	Foggy	C	45	36	62	39
"	8	49,304	51,129		1,735		3.39	C	Cl	Cl	R	45	31	66	55
"	9	46,106	48,528		2,422		4.99	Cl	R	R	R	43	36	68	55
"	10	46,654	48,691		2,037		4.18	Cl	C	PCl	C	49	37	56	35
"	11	45,842	46,267		425		.92	Cl	Cl	C	C	48	36	38	30
"	12	45,626	48,890		3,264		6.68	PCl	PCl	C	C	66	45	44	28
"	13	51,104	55,345		4,241		7.66	PCl	C	PCl	PCl	73	52	50	35
"	14	26,249	28,302		2,053		7.25	C	C	PCl	C	50	40	63	46
"	15	48,798	50,857		2,059		4.05	C	C-Cl	R	Cl-R	58	36	70	51
"	16	46,388	43,399	2,989		6.89		Cl	C	R	Cl	69	53	66	50
"	17	46,128	50,067		3,939		7.87	Cl	Cl	C	C	70	56	60	42
"	18	44,060	47,016		2,956		6.29	Cl	R	Cl	R	67	53	58	44
"	19	46,457	48,436		1,979		4.09	Cl	C	C	C	48	37	44	36
"	20	52,031	54,929		2,898		5.28	C	C	Cl	C	43	33	41	33
"	21	24,992	25,969		977		3.76	C	C	Cl	Cl	46	29	39	35
"	22	48,300	51,303		3,003		5.85	Cl	R	C	C	48	33	45	31
"	23	46,999	48,845		1,846		3.78	PCl	C	C	C	69	46	53	34
"	24	48,469	50,735		2,266		4.47	Cl	Cl	C	C	73	52	54	38
"	25	28,845	31,184		2,339		7.50	PCl	PCl	C	Cl	71	56	43	34
"	26	(Est) 45,671	47,127		1,456		3.09	Cl	Cl	R	Cl-R	55	48	56	39
					$58,868		4.58								


999
DWELLING PERMITS
700
600
500
400
300
200
100
1925
1926
1927

CLERK'S COPY.

Vol. V

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 792

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, APPELLANT,

vs.

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND

FILED MARCH 27, 1929

No. 826

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND, APPELLANTS,

vs.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

FILED APRIL 16, 1929

APPEALS FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND

(34,101, 34,135)

(33,773, 33,774)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 464

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, APPELLANT,

vs.

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND.

No. 465

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND, APPELLANTS,

vs.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE.

APPEALS FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND

VOL. V

INDEX

	Page
People's Counsel's Exhibits—List	1465
No. 1—Estimate of income for year 1927	1470
No. 2—Estimate of income for 1928 with a 10-cent cash fare	1471

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPT. 24, 1928

Page

No. 3—Yearly comparison of street car passengers and auto passengers 1472
No. 4—Ratio of the amount of outstanding securities and the basic value fixed by the Commission 1473
No. 5—Data on street railway operation in various cities for year 1926 1474
No. 6—Securities issued since 1910 1475
No. 7—Balance to surplus by years compared with common stock dividends 1476
No. 8—Comparison of cost of living with car fares and wages in Baltimore 1477
No. 9—Average decrease of daily receipts by days of the week, 1927 1478
No. 10—August report of industrial bureau, Baltimore Association of Commerce 1479
No. 11—Article from U. S. Daily, August 31, 1927 1495
No. 12—Income and surplus accounts, years 1920 to 1926 1496
No. 13—Comparison of net income for the first and last six months' periods of the years 1920 to 1926 1497
No. 14—Taxes paid for years 1923 to 1926, and estimated for 1927 1498
No. 15—Free tickets of all descriptions issued in 1926 1501
No. 16—Effect on income account of issue of 3-year notes 1502
No. 17—Accident and damage accounts 1503
No. 18—Statement of approximate cost of painting cars 1504
No. 19—Effect of variation of fare on revenue passengers 1505
No. 20—Comparison of effect of fare changes on revenue passengers, Charles St. Bus Line 1507
No. 21—Revenue passengers carried during the first 10 months of 1927, compared with corresponding period of 1926, East Fayette bus route 1508
No. 22—Comparison of cost of living with car fares in Baltimore 1509
No. 23—Comparison between cost of living and fares, 1913 to 1927 1510
No. 24—Present fares in cities having a population of over 100,000 1511
No. 25—Comparison of results of street railway operation in 1926 in other cities 1517
No. 26—Probable trend of business in 1928 as affecting revenue 1518
No. 28—Article from Baltimore Sun, Oct. 19, 1927 1521
No. 29—Estimate of passenger revenue for 1928, assuming 1% increase, etc. 1522
No. 30—Average loading and transfer passengers on Hartford Road cars 1523
No. 31—Estimated passenger revenue for 1928 with 8c full fare and 5c county fare 1524

Page.
No. 32—Estimate of net income and rate of return for 1928 1525
No. 33—Comparison of net income estimated for 1928 with tests applied by Commission in 1924..... 1526
No. 34—Estimate of earnings under fares shown by company exhibit No. 24..... 1527
No. 35—Estimate of earnings for years 1928-1930 based on company's estimate of future trends..... 1528
No. 36—Results of operations in 1927 compared to operations in 1922..... 1529
No. 37—Comparison of costs of superintendence in 1925 and 1926 1530
No. 38—Annual depreciation allowance equivalent to company's claims for condition of property as of December 31, 1923..... 1531
No. 39—Annual depreciation allowance equivalent to Commission's finding of condition of property as of December 31, 1923..... 1532
No. 40—Annual depreciation allowance based on percentages considered in valuation case No. 533..... 1533
No. 41—Operating revenues, expenses, etc., first six months of years 1926 and 1927..... 1534
No. 42—Depreciation..... 1546
No. 43—Accident and damage account, September 30, 1927 1550
No. 44—Property appraisal costs during period January 1, 1913 to September 30, 1927..... 1552
No. 45—Estimated revenue lost through the issuance of free tickets to employees and park concessionaires during 1926..... 1556
No. 46—Valuation as of December 31, 1923..... 1557
No. 47—Net return, average rate base, and percentag of rate of return for years 1924-1926..... 1590
No. 48—Investment in road and equipment as of December 31, 1923, and net additions thereto..... 1591
No. 49—Average rate of interest in indebtedness at September 30, 1927..... 1592
No. 50—Statement of notes outstanding September 30, 1927 1593
No. 51—Average weighted interest rates of securities authorized by Public Service Commission..... 1594
No. 52—Comparative consolidated general balance sheets 1595
No. 53—Results of operations under Sunday pass in Cincinnati, Ohio..... 1599
No. 54—Correspondence between E. D. Gilman and H. Carl Wolf..... 1600
No. 55—Value of service in 1927 compared to value found by Commission in January, 1919..... 1601

	Page
Halethorpe exhibits	1602
No. A—Comparative mileage chart	1604
No. B—Tabulation of exhibit A	1605
No. C—Map showing location of end of first fare zone	1606
No. D—Comparative airline mileage chart	1607
No. E—One fare distance from Baltimore and Charles Sts., compared with total Halethorpe line two fare district	1608
No. F—List of manufacturers served by car line No. 3	1609
No. G—List of larger manufacturing concerns	1610
No. H—Average airline distance, etc.	1611
No. I—Comparative annual cost of street railway transportation from Halethorpe and twelve other City Suburban car lines	1612
No. J—Official guide map of Portland, Ore.	1613
No. K—Chart showing number of dwellings constructed before and after one fare extension to Dundack Junction	1614
Stipulation as to record on appeal	1615
Clerk's certificate	1620

PEOPLE'S COUNSEL EXHIBITS—TEN CENT FARE CASES.

EMERGENCY RATE HEARINGS,

September, 1927.

PERMANENT RATE HEARINGS,

October, 1927.

Exhibit No.	Description	Filed In Evidence
1	Estimate of Income for the Year 1927. Based on same average decrease in Passenger Revenue (2.33%) and in Operating Expenses (1.02%) for year 1927 over 1926 as for first six months	9-9-27
2	Estimate of Income for 1928 with a 10c Cash Fare. Based on 5% and 10% Decrease in Cash Fare Passengers over 1926 and same Number of Commutation, Half and School Fares as in 1927	9-9-27
3	Yearly Comparison of Street Car Passengers & Auto Passengers. Object to show effect of automobile after 1920	9-9-27
4	Ratio of the Amount of Outstanding Securities and the Basic Value fixed by the Commission, $70,000,000	9-9-27
5	Data on Street Railway Operation in Various Cities for Year 1926	9-9-27
6	Securities Issued by the United Railways and Electric Company of Baltimore Since 1910	9-9-27
7	Balance to Surplus by Years Compared with Common Stock Dividends	9-9-27
8	Comparison of Cost of Living with Carfares and Wages in Baltimore	9-9-27

9	Average Decrease of Daily Receipts by Days of the Week 1927 Compared with 1926	9-9-27
10	August Report of Industrial Bureau, Baltimore Association of Commerce	9-9-27
11	"Reduction is Caused in July Retail Trade by Seasonal Decline," Article from U. S. Daily for August 31st	9-9-27
12	Income and Surplus Accounts Years 1920 to 1926 taken from Annual Reports to the Commission	9-9-27
13	Comparison of Net Income for the first and last six months periods of the years 1920 to 1926	9-9-27
14	Taxes paid for the years 1923 to 1926 and estimated taxes for the year 1927	9-9-27
15	Free Tickets of All Descriptions Issued in 1926	9-13-27
16	Effect on Income Account, of issue of 3-yr. notes of March 1, 1927, $2,500,000 at 6% to retire 5-yr. notes due Aug. 1, 1927, $2,500,000 at 6% (3-yr. Notes were delivered Mar. 4, 1927)	9-13-27
17	Accident and Damage Accounts	9-13-27
18	Statement of Approximate Cost of Painting Cars Different Exterior Colors	9-13-27
19	Effect of Variation of Fare on Revenue Passengers of Street Railway Companies. Data from A. E. R. A. Bulletin No. 116	11-21-27
20	Comparison of Effect of Fare Changes on Revenue Passengers on Charles Street Bus Line	11-21-27
21	Revenue Passengers carried during the first 10 months of 1927 compared with the corresponding period of 1926 for East Fayette Bus Route, 7c straight fare	11-21-27

22	Chart entitled Comparison of Cost of Living with Car Fare in Baltimore	11-21-27
23	Comparison between Cost of Living and Fares, 1913 to 1927	11-21-27
24	Present Fares in Cities Having a Population of Over 100,000	11-21-27
25	Comparison of Results of Street Railway Operation in 1926 in Other Cities Comparable to Baltimore	11-21-27
26	Probable Trend of Business in 1928 as Affecting Revenue of The United Railways and Electric Company of Baltimore	11-21-27
27	Cartoon from The Washington Post showing Business Outlook *Still Up and Going Strong*	11-21-27
28	Clipping from *Sun* of October 19, 1927, entitled "President Seeks to Reassure Country as to Business Trend"	11-21-27
29	Estimate of Passenger Revenue for 1928, Assuming 1% Increase (over 1927) in Full Fare Passengers and Normal Trends in Other Passengers, Allowing for a 1c Transfer Charge and Full Fare for Employees and Concessionaires	11-21-27
30	Average Loading and Transfer Passengers on Harford Road Cars 6-9 A. M. and 4-7 P. M. on Typical Week Day	11-21-27
31	Estimated Passenger Revenue for 1928 with 8c Full Fare and 5c County Fares—No tokens at reduced rates	11-21-27
32	Estimate of Net Income and Rate of Return for 1928 Based on Present Fares with Charges of 1c for Transfers and Full Fare for Employees and Concessionaires	11-21-27
33	Comparison of Net Income Estimated for 1928 with Tests Applied by Commission in 1924	11-21-27

34 Estimate of Earnings under Fares shown by Company Exhibit No. 24. Corrected for Operating Expenses, Depreciation and Taxes 11-21-27

35 Estimate of Earnings for Years 1928, 1929, 1930, Based on Company's Estimate of Future Trends. Continuation of Company Exhibit No. 24 11-21-27

36 Results of Operations in 1927 Compared to Operations in 1922 11-21-27

37 Comparison of Costs of Superintendence in 1925 and 1926 11-21-27

38 Annual Depreciation Allowance Equivalent to Company's Claims for Condition of Property as of December 31, 1923 11-21-27

39 Annual Depreciation Allowance Equivalent to Commission's Finding of Condition of Property as of December 31, 1923 11-21-27

40 Annual Depreciation Allowance Based on Percentages considered in Valuation Case No. 533 11-21-27

41 Operating Revenues, Expenses, Non-Operating Revenues, Deductions from Gross Income and Net Income for the first six months of the Years 1926 and 1927 (12 sheets) 11-21-27

42 Depreciation, 1912 to August 31, 1927 (4 sheets) 11-21-27

43 Accident and Damage Account, September 30, 1927 (2 sheets) 11-21-27

44 Property Appraisal Costs during the Period January 1, 1913, to September 30, 1927. Valuation as of January 1, 1914 (4 sheets) 11-21-27

45 Estimated Revenue lost through the Issuance of Free Tickets to Employees and Park Concessionaires during 1926 11-21-27

46 Valuation as of December 31, 1925, with Additions thereto and Retirements therefrom by Years, during the Period January 1, 1924, to August 31, 1927 (33 sheets) 11-21-27

47 Net Return, Average Rate Base and Percentage of Rate of Return for the Years 1924 to 1926, Inclusive 11-22-27

48 Investment in Road and Equipment as Shown by Books as of December 31, 1924, and Net Additions thereto for the Years 1924, 1925, 1926 and Eight Months to August 31, 1927 11-22-27

49 Average Rate of Interest on Indebtedness at September 30, 1927 11-22-27

50 Statement of Notes Outstanding September 30, 1927 11-22-27

51 Average Weighted Interest Rates of Securities authorized to be Issued by the Public Service Commission of Maryland, from January 1, 1921, to December 31, 1926 11-22-27

52 Comparative Consolidated General Balance Sheets. Years ended December 31, 1923, 1924, 1925 and 1926, and at August 31, 1927 (4 sheets) 11-22-27

53 Results of Operations under Sunday Pass in Cincinnati, Ohio 11-30-27

54 Telegrams to and from Mr. Gilman, Director, Public Utilities, Cincinnati, Ohio..11-30-27

55 Value of Service in 1927 Compared to Value by Commission in January, 1919.....11-30-27

People's Counsel Exhibit No. 1

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

ESTIMATE OF INCOME FOR THE YEAR 1927

Based on same average decrease in Passenger Revenue (2.33%) and in Operating Expenses, (1.02%) for year 1927 over 1926 as for first six months.

	Actual Year 1926	Estimated 1927
Passenger Revenue	$ 16,483,923	$ 16,099,848
Other Revenues	231,786	231,786
Total	16,715,709	16,331,634
Operating Expenses	9,955,020	9,853,479
Depreciation (5% of Rev.)	835,785	816,582
Total	$ 10,790,805	$ 10,670,061
Net Operating Revenue	5,924,904	5,661,573
Taxes		
Property, etc.		467,110
Park Tax (6.7%)		1,078,690
Income Tax		67,333
Total	$ 1,672,316	1,613,133
Operating Income	4,252,588	4,048,440
Non-Operating Income	139,569	171,000
Gross Income	4,392,157	4,219,440
Deductions	3,382,102	3,438,000
Net Income	$ 1,010,055	$ 781,440

90

People's Counsel Exhibit No. ____

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

ESTIMATE OF INCOME FOR 1928 WITH A 10¢ CASH FARE

Based on 5% and 10% Decrease in Cash Fare Passengers over 1926 and same Number of Commutation, Half, and School Fares as in 1927

Estimate of Income on Two Bases

		5% Decrease 215,732,597 Revenue Passengers		10% Decrease 205,197,695 Revenue Passengers
Passenger Revenue		$ 20,782,993		$ 19,729,503
Other Revenues		235,000		235,000
Total		$ 21,017,993		$ 19,964,503
Operating Expenses (A)		10,003,479		10,003,479
Depreciation (5% of Rev.)		1,050,900		998,225
Taxes				
Property, etc.	$ 467,110		$ 467,110	
Park Tax (6.7%)	1,392,461		1,321,877	
Income Tax	597,380	2,456,951	471,800	2,260,787
Total Operating Deductions		15,511,330		15,262,491
Operating Income (B)		7,506,663	(B)	6,702,012
Non-Operating Income		171,000		171,000
Gross Income		7,677,663		6,873,012
Interest Deductions		3,500,000		3,500,000
Net Income		$ 4,177,663		$ 3,373,012

(A) 1927 Estimated	$ 9,855,479
Increase in Power	100,000
Increased Accident Reserve	50,000
	$10,003,479

Note: This provides for the identical service as in 1927, although the lessened number of passengers results in more seats per passenger.

(B) $7,506,663 = 10.1% on $75,000,000
6,702,012 = 8.9% on 75,000,000

UNITED RAILWAYS & ELECTRIC CO.

YEARLY COMPARISON OF STREET CAR PASSENGERS & AUTO PASSENGERS

BALTIMORE YEAR	REVENUE PASS.	% CHANGE	NO. OF AUTOS IN STATE	AUTO PASS. 400/AUTO	% INCREASE	TOTAL PASS. CARS & AUTOS	% CHANGE
1910	154,928,765		4,133	1,653,200		156,581,965	
1911	161,467,727	4.20	6,754	2,601,600	57.30	164,069,327	4.78
1912	172,233,341	6.66	9,672	3,868,800	48.65	176,102,141	7.34
1913	182,180,767	5.79	13,017	5,206,800	34.55	187,387,567	6.40
1914	185,296,350	1.70	18,213	7,285,200	39.80	192,581,550	2.76
1915	181,744,023	- 1.92	27,947	11,178,800	53.50	192,922,823	.18
1916	199,158,285	9.56	39,545	15,818,000	41.35	214,976,285	11.44
1917	212,893,619	6.90	54,643	21,857,200	38.00	234,750,819	9.20
1918	226,834,528	6.55	66,666	26,666,400	21.95	253,500,928	7.98
1919	243,890,966	7.50	85,534	34,213,600	28.15	278,104,566	9.71
1920	253,934,129	4.11	104,441	41,776,400	22.10	295,710,529	6.34
1921	238,090,980	- 6.25	121,249	48,499,600	16.05	286,590,580	- 3.08
1922	233,732,146	- 1.83	147,024	58,809,600	21.15	292,541,746	2.08
1923	238,658,380	2.11	169,351	67,740,400	15.20	306,398,780	4.74
1924	228,423,774	- 4.30	198,398	79,359,200	17.15	307,782,974	.45
1925	224,235,527	- 1.84	240,664	96,265,600	21.35	320,501,127	4.14
1926	225,255,633	.46	258,071	103,228,400	7.25	328,584,033	2.52
1927	Est.220,000,000	- 2.32	281,500	112,600,000	9.10	332,600,000	1.24

92/6

People's Counsel Exhibit No. 4

UNITED RAILWAYS AND ELECTRIC COMPANY

(Including Maryland Electric Railway Company.)

Ratio of The Amount of Outstanding Securities and the Basic Value fixed by the Commission----------$70,000,000.

Class of Securities	Outstanding 12/31/1926.	Percent of Basic Value	Outstanding 6/30/1927.	Percent of Basic Value
Mortgage Bonds	47,405,000	67.7	47,405,000	67.7
Miscellaneous Obligations	6,392,700	9.1	7,664,200	10.9
Income Bonds	13,977,000	20.0	13,977,000	20.0
Total Bonds & Miscellaneous Obligations	67,774,700	96.7	69,046,200	98.7
Stocks	20,461,200	29.2	20,461,200	29.2
Grand Total	88,235,900	126.0	89,508,400	127.9

A — A.E.R.A. Bulletin #145
B — A.E.R.A. Bulletin #148
C — Without Income Bonds
D — Including Equipment Trust Certificate
M — Moody's Manual

People's

DATA ON STREET RAILWAY OPERATION IN VARIOUS CITIES FOR YEAR 1926

CITY	COMPANY	Miles of Track	Funded Debt and Income Bonds (M)	Total Revenue From Street Rwy Transportation (M)	Funded Debt per Mile of Track Operation
Detroit 5/31/27	Department of Street Railways	399-A	35,155,000	21,544,271	88,000
Los Angeles	Los Angeles Rwy Corporation		19,852,000	12,118,459	
San Francisco	Market Street Railway	274-B	11,695,000	9,815,657	42,600
Pittsburg	Pittsburg Railways Company	592-A	34,215,000	21,727,230	57,700
Boston	Boston Elevated Rwy Company	496-A	49,819,000	35,371,330	100,200
Cleveland	Cleveland Railway Company	411-A	5,495,000	18,002,060	13,310
St. Louis	United Railways of St. Louis	435-B	52,590,000	18,873,431	120,900
Baltimore	United Rwys and Elec. Co. of Balto.	413-B	67,774,700 (C) 53,797,700	16,715,709	164,000 130,000
St. Paul, Minn.	Twin City Rapid Transit	504-A	19,478,000	13,945,267	38,700
Buffalo	International Railway Company	408	25,392,782	10,650,372	62,200
Providence	United Electric Railways	290-B	13,714,000	8,244,683	47,200
Washington	Capital Traction Company	73-A	5,606,000	4,616,986	77,000
Cincinnati	Cincinnati Street Railways	266-A	(D) 5,288,400	8,102,517	19,840
Indianapolis	Indianapolis Street Rwy Company	165-A	13,497,517	5,518,795	56,300
Denver	Denver Tramway Corporation	222-A	10,863,500	4,565,251	48,900

People's Counsel Exhibit No. 5

t Certificate

DATA ON STREET RAILWAY OPERATION IN VARIOUS CITIES FOR YEAR 1926

COMPANY	Miles of Track	Funded Debt and Income Bonds (M)	Total Revenue From Street Rwy Transportation (M)	Funded Debt per Mile of Track Operation	Funded Debt per Dollar Gross Revenue
ent of Street Railways	399-A	35,155,000	21,544,271	88,000	1.63
eles Rwy Corporation		19,852,000	12,118,459		1.64
Street Railway	274-B	11,695,000	9,815,657	42,600	1.19
rg Railways Company	592-A	34,215,000	21,727,230	57,700	1.57
Elevated Rwy Company	496-A	49,819,000	35,371,330	100,200	1.41
nd Railway Company	411-A	5,495,000	18,002,060	13,310	.30
ailways of St. Louis	435-B	52,590,000	18,873,431	120,900	2.80
wys and Elec. Co. of Balto.	413-B	67,774,700 (C) 53,797,700	16,715,709	164,000 130,000	4.05 (C) 3.22
y Rapid Transit	504-A	19,478,000	13,945,267	38,700	1.40
tional Railway Company	408	25,392,782	10,650,372	62,200	2.47
lectric Railways	290-B	13,714,000	8,244,683	47,200	1.61
raction Company	73-A	5,606,000	4,616,986	77,000	1.21
ati Street Railways	266-A	(D) 5,288,400	8,102,517	19,840	.65
olis Street Rwy Company	165-A	13,497,517	5,518,795	56,300	2.35
Tramway Corporation	222-A	10,863,500	4,565,251	48,900	2.38

People's Counsel Exhibit No. 6

SECURITIES ISSUED BY THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE SINCE 1910

DATE ISSUED		DESCRIPTION	AMOUNT	PROCEEDS	RATE RECEIVED	INTEREST RATE
1911	2nd Half	3 Years' Notes	$ 3,125,000	$ 3,046,876	97½	5%
1914	"	10 Year Car Trust Certificate	153,000	153,000	100	6%
1914	2nd Half	2 Year 5% Collat. Trust Notes	1,000,000	995,000	99⅛	5%
1914	"	1st Mtge. Gold Sinking Fund Bonds(Md. Elec. Rys.)	489,000	469,440	96	5%
1916	Feb	5 Year 5% Gold Notes	2,750,000	2,695,000	98	5%
1917	Oct.	6% Convertible Gold Notes	3,000,000	2,850,000	95	6%
1919		5 Year Convertible Notes	1,528,000	*	*	5%
1917		1st Mtge. Gold Bonds (Md. Elec.Rys.)	457,000	447,860	98	5%
1920	2nd Half	Car Trust Certif.-Series 1920 (10 Years)	875,000	831,250	95	8%
1921	Feb.	7½ Coupon Gold Notes	1,500,000	1,383,750	92¼	7½%
1922	Apr.	1st Consol.Mort.-50 Year Gold Bonds	6,000,000	5,550,000	92½	6%
1922		(1st Consol.Mort.-50 Year 6% Gold Bonds In lieu of 4% Bonds ($2,684,000 @ $250 per Bond.		671,000	—	6%
1922	July	5 Year 6% Gold Notes	2,500,000	2,375,000	95	6%
1924	1st Half	1st & Refunding Gold Bonds Ser. A. (Md. Elec. Rys.)	4,000,000	3,790,000	94¾	6½%
1927	July	3 Year Notes	2,500,000	2,412,609	96½	6%

*Issued to convert 5% Notes due February 1921.

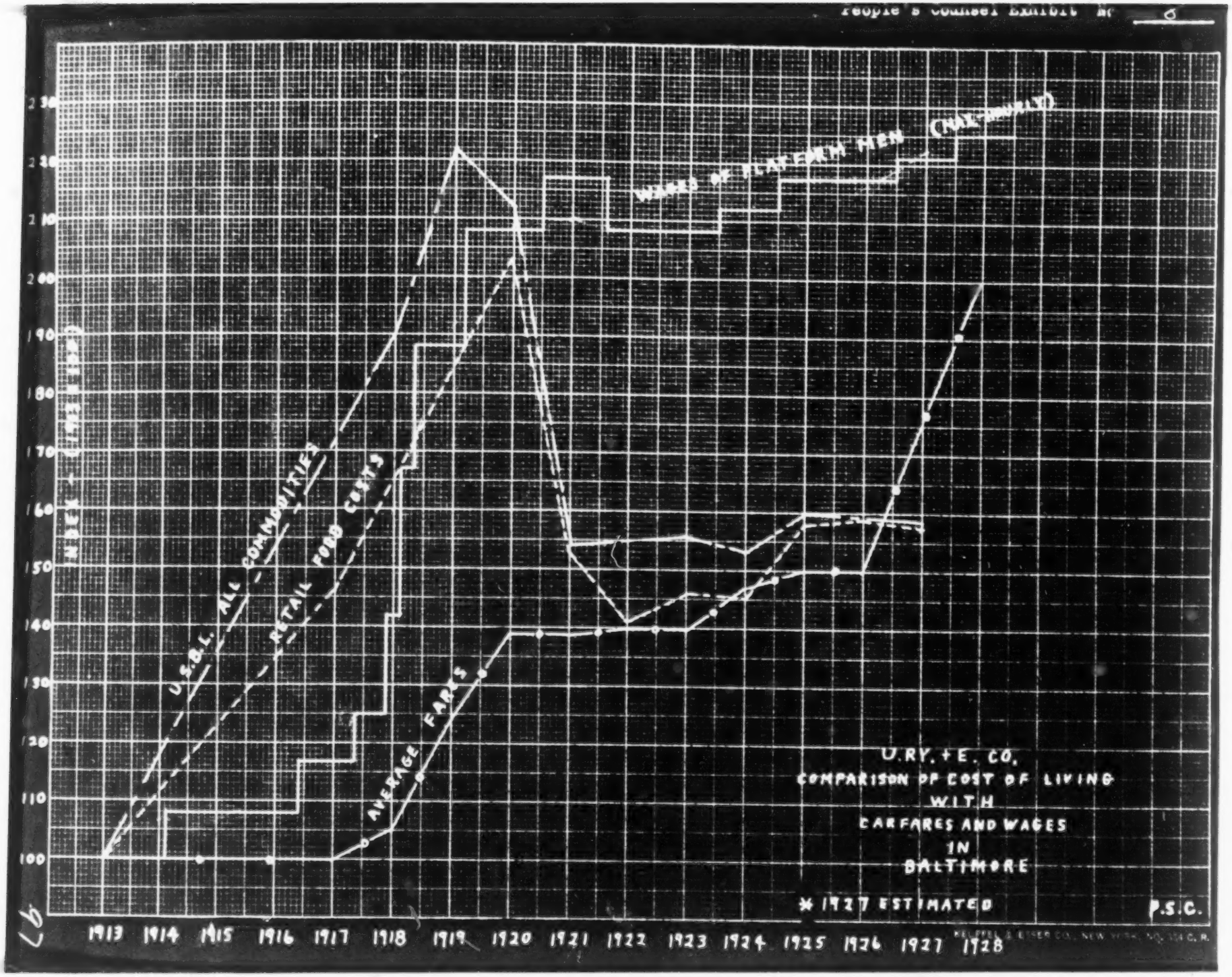
Peoples' Counsel Exhibit 7

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

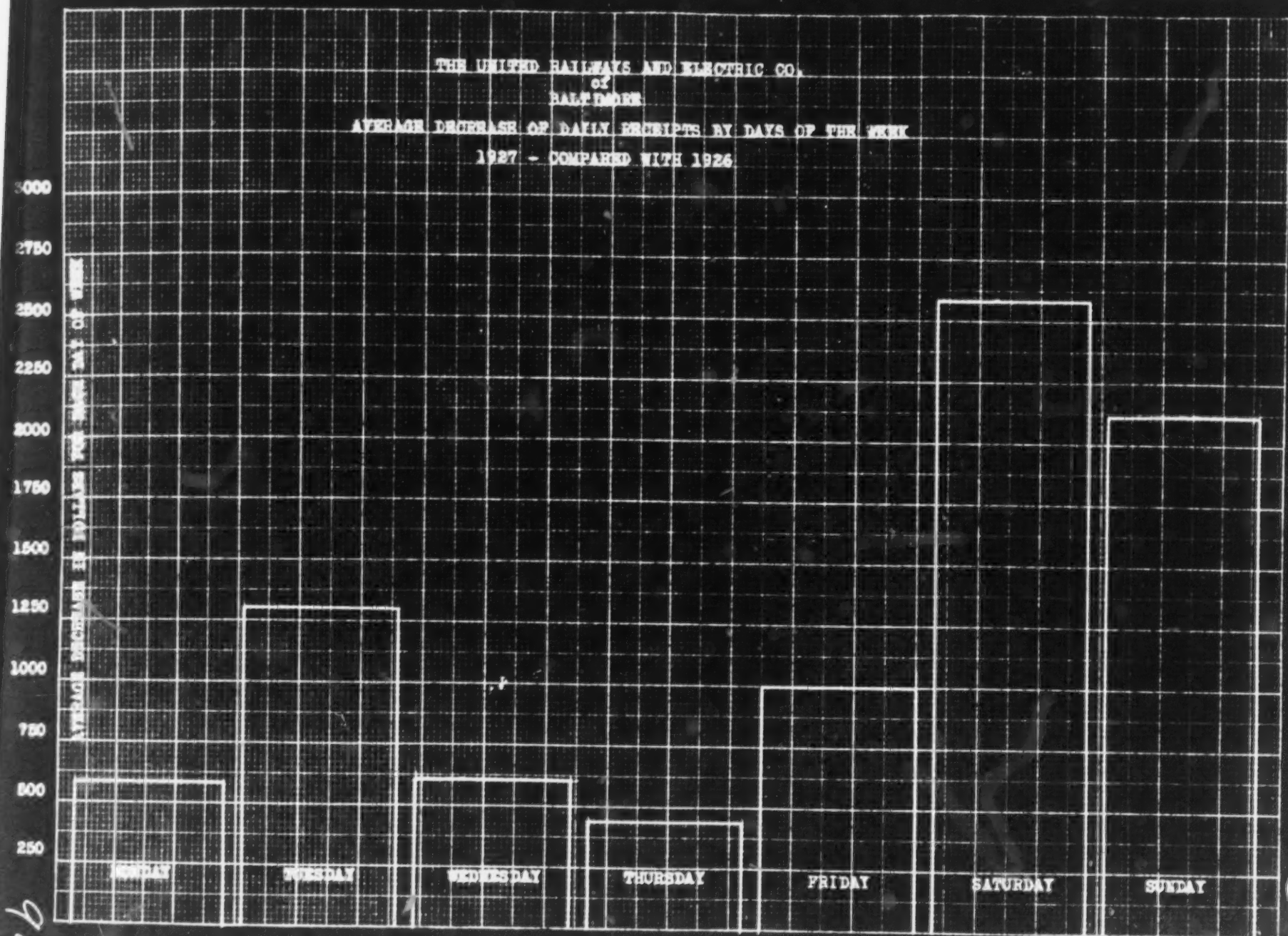
BALANCE TO SURPLUS BY YEARS COMPARED WITH COMMON STOCK DIVIDENDS

	Annual Balance	Cumulative Average	Common Stock Dividends Paid
1912	$ 678,042	$ 678,042	$ 225,000
1913	792,322	735,182	826,290
1914	819,368	763,244	816,958
1915	819,368	777,275	818,446
1916	1,108,124	843,445	818,448
1917	875,587	848,802	818,448
1918	332,652	775,066	818,448
1919	245,425	708,986	204,612
1920	1,043,599	746,165	-------
1921	635,231	735,072	-------
1922	799,269	740,908	409,224
1923	976,266	760,521	818,448
1924	967,968	776,478	818,448
1925	980,610	791,059	818,448
1926	1,010,054	805,659	818,448

Note: No dividends paid on Common Stock prior to 1912.


INDEX - (1913=100)
U.S.B.L. ALL COMMODITIES
RETAIL FOOD COSTS
AVERAGE FARES
WAGES OF PLATFORM MEN (MAXIMUM)
U.RY. + E. CO.
COMPARISON OF COST OF LIVING
WITH
CARFARES AND WAGES
IN
BALTIMORE
* 1927 ESTIMATED
P.S.C.
100
110
120
130
140
150
160
170
180
190
200
210
220
230
1913
1914
1915
1916
1917
1918
1919
1920
1921
1922
1923
1924
1925
1926
1927
1928

People's Counsel Exhibit No. 4



98

9

PEOPLE'S COUNSEL EXHIBIT NO. 10.

(Not for Publication).

AUGUST REPORT OF INDUSTRIAL BUREAU BALTIMORE ASSOCIATION OF COMMERCE

Report No. 99. September 7, 1927.

SUMMARY:

August	Employees Required	Plant Investment
One new industry and Thirteen expansions..	273	$1,475,000

A definite upward trend from the seasonal slowing down of industry during the summer months is indicated in the unusual number of expansions already under way or planned for this fall.

The largest expansion noted in the following pages is that of the A. S. Abell Company, publishers of The Sun and The Evening Sun. This program includes the occupancy of about 50 per cent. additional floor space, and very material additions to its press and other mechanical equipment.

The Fish Dry Cleaning Company announces plans for a new and enlarged factory. There has been unusual activity throughout the year in this line, practically all the leading firms moving into new homes or modernizing their plants. The Olympic Press is adding a new department for binding novels and school books; the Foster Brothers Manufacturing Company plans a sizable expansion; as do also the following firms: A. Weiskittel & Sons Co., Locke Insulator Corporation, American Bank Stationery Company, J. H. Filbert, Inc., Farboil Paint Company, National Stamping & Enameling Company, and the Obrecht-Lynch Corporation, which has begun a large ship repair yard. Two fertilizer firms, the Baugh Chemical Company and the Summers Fertilizer Company, are also erecting warehouses.

Somewhat recently, certain pessimistic guesses have been made regarding the number of unemployed in Baltimore, some of these guesses suggesting figures rang-

ing from 40,000 to 60,000. On account of the fact that employment conditions are below normal, many have accepted these figures at face value. Attention is therefore called to the fact that at the depth of the 1921 depression a thorough check of firms employing 150,000 workers, made by this bureau, showed a reduction of 16,500 persons, or an unemployment ratio of 11.5 per cent. As an indication of how much better conditions are today than in August 1921, it is interesting to note that the present month's bank clearings are over 62.5 per cent. higher than they were six years ago and even building contracts for the first six months were 85 per cent. higher than for the similar months of 1921.

It is also often overlooked that unemployment in normal times, represents approximately 5 per cent. of the total number at one time or another employed, which 5 per cent. is to a considerable extent composed of those least adapted to work either by nature or inclination.

BUILDING OPERATIONS:

(On account of an unusual delay in the office of the Building Inspector, due to the illness of the statistican, building permits for August are not yet available and, therefore, cannot be included in this report. The figures will be mailed to subscribers as soon as they can be obtained.)

Proposed building construction, other than industrial, as reported in the local daily press, or in trade publications, during August was as follows: A $500,000 medical library building and a $300,000 kitchen for the Johns Hopkins Hospital at Wolfe and Monument streets; a $125,000 building at Guilford avenue and 22nd street for the Maryland State Motor Vehicle Commission; a $150,000 addition and laundry by the Mission Helpers of the Sacred Heart, McCulloh and Biddle streets; a $150,000 engineering building for Loyola College at Evergreen; a Y. M. H. A. and Y. W. H. A. building on Monument street between Howard and Eutaw streets; a $175,000 automobile service, repair and garage building by the Consolidated Gas Electric Light & Power Company; and a $300,000 convent and school for the St. Williams Catholic Church, Edmondson avenue, Lyndhurst.

Building contracts for Baltimore during August totaled $3,578,500, according to the F. W. Dodge Corporation. This compares with $7,677,000 for August of last year, a loss of 53.39 per cent. Contracts for the first eight months of 1927 total $37,414,100, as against $40,-123,000 for the corresponding period of 1926, a loss of 6.75 per cent.

DEEDS AND MORTGAGES:

Deeds placed on record during the four weeks of August numbered 1,876, with considerations aggregating $763,291.53. This compares with 1,966 deeds, with values of $624,130.57 for August 1926. Mortgages during the four weeks of August numbered 1,957, involving $8,-564,094.02, which contrasts with 2,197 mortgages, with a total value of $9,163,327.83, for the corresponding period of last year.

NEW INDUSTRIES AND EXPANSIONS:

The Industrial Bureau's summary of new industries, new warehouses and expansions for the month of August follows: (Previously reported, 1290)

1291—

The Olympic Press, Dennis O'Leary, president, 514 East Lombard street, has been incorporated to take over the business formerly conducted at this address by the Baltimore Book Bindery. A large expansion is being carried out, the most important element of which is a complete new unit especially equipped for edition work. This new department, which is understood to be the only one in Baltimore, will specialize in covers for school books, novels, etc. A New York office will be opened shortly. (See Report 93, page 6)

1292—

The R. C. Heller Company, R. C. Heller, president, 24 South Frederick street, has secured the controlling interest in the plant of Foster Brothers Manufacturing Company, 320 North Holliday street, which manufactures bed springs, metal beds, hammocks, matresses and

pillows. No change is planned for the plant of the R. C. Heller Company, producer of matresses, pillows, boat cushions, life preservers, box springs, etc., but there will be a considerable expansion of the facilities of the Foster Brothers Manufacturing Company, which will take on from 50 to 75 additional workers and increase its output by 25 per cent. This expansion will be carried out immediately. (See report 93, item 1238.)

1293—

A. Weiskittel & Son Company, Harry C. Weiskettel, president, Lombard and 12th streets, manufacturer of sanitary enamel ware, stoves, furnaces, etc., has awarded a contract for the erection of a one-story addition to its plant to cost about $100,000, which will be used as a warehouse for enameled bath tubs, lavatories and sinks to take care of the firm's increased business in these lines. (See Report 85, item 1142.)

1294—

The Locke Insulator Corporation, F. H. Regan, president, Charles and Cromwell streets, producer of electric porcelain insulators and attachments for high tension purposes, is erecting three buildings, one 50 by 50 feet for the storage of flint and feldspar; another, 40 by 60 feet, to be used as a press room; and the third, 32 by 72 feet, for clay working equipment. (See Report 93, item 1243.)

1295—

The American Bank Stationery Company, Oscar T. Smith, Jr., manager, is erecting a two-story addition, 75 by 89 feet on the northeast corner of Aisquith and Curtain streets, work upon which is just starting. This concern was organized quite recently through the merger of the Oscar T. Smith Company and the Giddings & Rogers Company. (See Report 97, page 4.)

1296—

J. H. Filbert, Inc., M. V. Filbert, president, 804-808 Calverton Road, is erecting a one-story brick addition,

50 by 131 feet, which will be ready for occupancy within two months. This space will be utilized for both manufacture and storage. The firm manufactures oleomargarine and bakers' shortening. (See Report 16, item 263.)

1297—

The Farboil Paint Company, M. D. Swartz, owner, Eastern avenue and Eleventh street, manufacturers of paints, varnishes, enamels, lacquers, etc., is planning to make a considerable addition to its present facilities. Three new buildings are included in its building program, in addition to the building program now under way.

1298—

The A. S. Abell Company, owner of The Sun and The Evening Sun, Paul Patterson, president, Charles and Baltimore streets, has begun work on its plant designed to give it additional space for expansion of its mechanical, business and editorial departments. Plans call for practically the entire rebuilding of the property adjoining the present plant at 9-11 West Baltimore street and 4-6 Redwood street to make them conform to the Sun Building. Four additional presses, which will supply a 75 per cent. increase in the press capacity of the papers, will be added; 40,000 square feet of floor space for the composing room; 40 per cent. increase in the space for its mailing and distributing department; doubling the amount of space for its news and editorial departments; and installation of a modern restaurant to care of 200 persons at a time. Employes of the Sunpapers working in the Sun Building alone exceed 1,000 persons. (See Report 98, page 5.)

1299—

The Electric Maid Bake Shops, Maurice R. Oppenheim, temporary local representative, 110 East Lexington street, with headquarters in Milwaukee, Wisconsin, has leased the building at 945 West Baltimore street, and is equipping it for the production of confectionery

and bread. It is understood this firm plans to open a dozen or more branch plants in Baltimore.

1300—

The Baugh Chemical Company, R. H. Brewster, Jr., president, Clinton and Eleventh streets, manufacturer of fertilizers and fertilizer materials, has let a contract for the erection of a storage building, 45 by 300 feet, as an addition to its plant facilities, which will be completed by the end of the year.

1201—

The Fish Dry Cleaning Company, Max Fish, president, 2551 Pennsylvania avenue, will begin work about October 1 on a new plant at the southeast corner of Twenty-fifth street and Cecil avenue. The building will be one-story, containing about 30,000 square feet of floor space, and will cost approximately $100,000. When completed the first of next year, the firm expects to employ about 200 workers. (See Report 34, item 533.)

1302—

The Summers Fertilizer Company, J. E. Totman, president, Clinton and Fourth streets, is erecting a one-story frame warehouse 60 by 100 feet. The large plant expansion program under consideration several months ago has been postponed until next year. (See Report 96, item 1273.)

1033—

The National Stamping & Enameling Company, William Matthai, vice-president and general mangaer, 1901-1919 Light street, has let a contract for the erection of a one-story addition, 88 by 180 feet. This building will be at the southwest corner of Johnson and Winder streets, and will be used for manufacturing purposes, the merging at this central point of the firm's branch plants here necessitating additional space. (See Report 98, page 5.)

1304—

The Obrecht-Lynch Corporation, Charles B. Lynch, president, 316 Light street, general ship repairs and stationary machine and boiler work, is building a ship repair yard on Key Highway at Lawrence street. A bulkhead, together with a 450-foot pier, has been completed. Other important units to this development will be announced next month. (See Report 65, page 5.)

INDUSTRIAL NOTES:

The Davison Chemical Company during the past year has gone extensively into the fertilizer manufacturing business, its yearly tonnage now being approximately 600,000 tons, which makes it fourth in point of size in the country. During the last year, it has acquired fertilizer plants as follows: Two in Baltimore, one each in Petersberg, Va., Norfolk, Va., Newbern, N. C., Goldsboro, N. C., Elizabeth City, N. C., Edenton, N. C., Weldon, N. C., Herford, N. C., Lewes, Del., and Alliance, Ohio. The company had previously confined its activities along this line mainly to acids and acid phosphates used in the manufacture of fertilizer, but had not engaged directly in its production.

The Thomas Asphalt Products Company, which has fully equipped a plant on the grounds of the Inter-Ocean Oil Company, East Brooklyn, leasing three oxidizing stills from the oil company, has been idle for the last few months. It is now largely a selling concern for the Central Commercial Company, which also has an asphalt plant on this property, and which has been gradually expanding its facilities from time to time as its needs required. The Thomas Asphalt Products Company will not operate at this time, but will be held for emergency duty. H. R. Gundloch is the local representative for both companies. (See Report 95, page 8).

The plant of the Commercial Pigments Company at Curtis Bay, where three of the buildings of the Curtis Bay Copper & Iron Works are being equipped for the manufacture of white paint pigment, will be ready for operation on a limited scale during October, though it will not be fully equipped until the first of the year.

The plant superintendent is Herbert L. Rhodes. The offices of the company are at 17 East 42nd street, New York City. The directors of this company, who are also directors of the Commercial Solvents Corporation, are as follows: Joseph Blumenfield, Willis H. Booth, Clement R. Ford, D. M. Goodrich, J. D. Maguire, George M. Moffett, P. G. Munford, W. D. Ticknor and Charles Weizmann. (See Report 98, page 5.)

The Fluid Heat Corporation, 112 East Lombard street, producer of oil burning equipment, failed to exercise its option on the plant of the Reed & Fiber Company, and will remain in its present quarters until next fall. It has rented storage space on President street in an effort to provide additional manufacturing space at its plant. This firm has changed its line somewhat, and for the coming year will concentrate on a particular burner. (See Report 97, page 4.)

The Highkin Process Dental Laboratories, Dr. A. Y. Russell, president, has opened a laboratory at 13 West Saratoga street, where it will produce a patented articulator for making false teeth by an altogether new method.

The Tess Chemical Company has been incorporated by the Fleischer Weil Company, 105 West Baltimore street, to produce a hair pomade.

The Baltimore Clothes, Inc., has been organized with headquarters at 37 Hopkins Place for the manufacture of men's clothing through the consolidation of the two clothing firms of J. S. Goldsmith & Bro., 407 North Gay street, and L. Singer & Son, 323 West Baltimore street. Jacob S. Goldsmith is president, and Samuel M. Singer, vice-president, of the new company.

The Commercial Envelope Company, which now occupies space in the Candler Building, has leased 13,000 square feet of space on the second floor of the plant of the Bes-Cone Company, Railroad avenue, north of Union avenue, into which it will move on January 1 of next year. (See Report 76, item 1051.)

The new factory for the Davis Instrument Manufacturing Company, which is to be erected by J. H. Rest

on 36th street near Old York Road, will be a one-story structure, about 35 by 100 feet, and will be begun immediately. (See Report 98, item 1290.)

The Building Inspector has refused a permit to the Washington Cleaners and Dyers, 1917 Vine street, to add an addition to its plant. The company will remain in its present quarters this year, but because of increasing business will be forced to move into larger quarters elsewhere sometime next year. (See Report 98, item 1286.)

The Blaw-Knox Company, with general offices at Pittsburgh, Pennsylvania, which operates a plant in Baltisolidated September 1. The Milliken Brothers Manufacturing Company of New York City, with which it consolidated September 1. The Milliken Brothers Manufacturing Company produces, largely for export, transmission towers, radio towers and standard steel buildings. The Milliken branch will, in addition to its present export business, take over the export trade of the purchasing company, while the latter will continue, with its present organization, to handle domestic business of both companies. (See Report 68, page 4.)

John J. Greer & Company's new iron and steel warehouse, one-story, 264 by 123 feet, at Ridgely and Ostend streets, is about completed, and will be ready for occupancy within a week or two. (See Report 94, item 1248.)

H. C. Garthe, jewelry engraver and silversmith, has moved from 28 East Baltimore street to the third floor of the building at 209 North Liberty street.

Kulbashian Brothers, dealer in rags, is moving from 1513 Gough street into new quarters at Central avenue and Gough street.

The Diamond Refrigeration & Storage Company, Samuel Memo, manager, has occupied the rear half of the building formerly operated by the Lexington Refrigeration and Storage Corporation, 210 Diamond street. It is being utilized for storage of vegetables and food products only.

The Electric Bakeries of Baltimore is establishing a new branch bakery at 945 Whitelock street. This company is now operating bakeries at eight locations in this city. (See Report 96, page 5.)

Baker, House & Stout, 1529 Myrtle avenue, manufacturer of potato chips, has recently changed from steam to electric power.

Vaile & Young, Bush street and the Baltimore & Ohio Railroad, has added some new machinery to its equipment.

The Apex Wood Products Company, 1400 Fleet street, jobbers of sawdust, charcoal and excelsior, has put in some new machinery as part of its equipment for handling its products.

The new plant of the Parisienne Dyeing & Cleaning Company on Kate avenue adjacent to the plant of the Cinder Block Corporation, has been completed, and machinery is being installed. (See Report 95, item 1270.)

The Ansco Shoe Rebuilding Company has taken over the two-story building at 226 North Gay street and is equipping it for the repairing of shoes.

The Superior Ice Cream Company, 2336 East North avenue, has changed its name to the Arctic Ice Cream Company. (See Report 55, item 815.)

The Gatch Wire Goods Company, which maintains a plant at the City Jail, has changed its name to the Gatch Brush and Wire Goods Company. (See Report 60, item 879.)

The Belair Road Supply Company, Belair Road and Montana avenue, is completing the erection of a warehouse with Baltimore & Ohio Railroad siding at Loney's and Sinclair Lanes. The structure is one-story and basement, 40 by 80 feet. The firm will maintain its present establishment in addition to the one just completed.

The new plant of the Ward Baking Company, Edmondson avenue and Bentalou street, is practically completed, and will be placed in operation within the next few weeks. (See Report 95, page 7.)

Edward G. Berlett, who operates a slaughtering and meat packing plant in the rear of 263 South 3rd street, is completing a program of improvement in various departments, the slaughter house being enlarged, and new refrigeration installed.

TELEPHONE CALLS:

The Chesapeake & Potomac Telephone Company of Baltimore furnishes the following comparisons of the total number of originating telephone calls in Baltimore for the first seven months of this and last year:

	1927	1926	% Decrease
January	16,062,519	16,120,343	— .36
February	14,902,812	15,015,016	— .75
March	16,694,584	16,558,963	.82
April	16,382,019	16,435,322	— .33
May	16,177,835	16,390,037	— .29
June	15,295,870	15,297,264	— .01
July	14,400,908	14,713,415	—2.12
	109,916,637	110,530,350	— .55

INDUSTRIAL AND COMMERCIAL GAS CONSUMPTION:

Total sales in cubic feet of gas for industrial and commercial purposes during the first seven months of this and last year are reported as follows by the Consolidated Gas Electric Light & Power Company:

	1927	1926	% Increase
January	279,599,400	275,006,400	1.67
February	261,697,600	284,937,600	—8.16
March	255,032,200	276,218,900	—7.67
April	235,639,700	246,635,900	—4.46
May	206,426,100	200,190,200	3.11
June	199,783,700	192,893,300	3.57
July	179,677,700	171,211,900	4.94
	1,617,856,400	1,647,094,200	—1.77

INDUSTRIAL POWER LOAD:

Industrial power supplied to local industries by the Consolidated Gas Electric Light & Power Company for

the first seven months of this year, and for the same months of 1926, is listed below. The figures given are strictly for industrial power, and do not include domestic and other users. Kilowatt hours supplied to local industries (less the Bethlehem Steel Company and the Baltimore Copper Smelting & Rolling Company):

	1927	1926	% Increase
January	29,127,634	27,293,491	6.72
February	27,649,313	26,480,993	4.41
March	29,715,143	28,978,903	2.54
April	28,805,972	28,321,892	1.71
May	29,368,027	27,125,837	8.26
June	29,838,269	28,699,495	3.97
July	29,280,524	28,975,783	1.05
	203,784,882	195,875,884	4.04

STREET CAR PASSENGERS:

A comparison of street car passengers carried by the United Railways & Electric Company during the first seven months of this year, as against the corresponding period of last year, is noted below. It will be observed that the totals for July were smaller by 4.20 per cent. Than for July, 1926.

	1927	1926	% Decrease
January	19,012,646	18,952,322	.32
February	17,177,034	17,458,793	—1.61
March	19,264,995	19,760,440	—2.51
April	18,925,630	19,193,294	—1.39
May	19,001,550	19,778,990	—3.93
June	17,969,391	18,571,415	—3.24
July	17,100,120	17,849,930	—4.20
	128,451,366	131,565,184	—2.36

POSTOFFICE RECEIPTS:

The total of receipts for the Baltimore Post Office during August was $521,815.15, an increase of $31,161.14, or 6.35 per cent. over the corresponding period of last

year. A comparison of receipts for the first eight months of this and last year follows:

	1927	1926	% Increase
First six months....	$3,441,996.39	$3,402,985.65	1.15
July	484,747.34	497,529.91	—2.57
August	521,815.15	490,654.01	6.35
	$4,448,558.88	$4,391,079.57	1.31

BUSINESS FAILURES:

R. G. Dun & Company report 29 business failures for Baltimore during August, with assets of $234,060, and liabilities of $354,195. This compares with 13 business failures for August, 1926, with assets of $28,957, and liabilities of $133,723. Among the industrial firms for whom receivers were appointed during August were the following: Elk River Clay Products Corporation, 1137 Calvert Building, and the Supreme Cloak & Suit Company, 2334 East Monument street.

SHIPPING ACTIVITIES:

Two hundred and sixty-four steamships arrived at the Port of Baltimore during August, as against 368 for the corresponding month of last year. This discrepancy in numbers is due almost exclusively to the fact that an abnormal amount of coal was being shipped abroad at this season last year. Of that arrivals, 180 were of United States registery; Great Britain, 29; Norway, 22; Sweden and Germany, 6 each; Denmark and Japan, 5 each; Panama and Italy, 3 each; Holland, 2; Brazil, France and Peru, 1 each.

Exports for June from the local port were valued at $7,919,400, as against $6,592,712 for June, 1926, a gain of 20.12 per cent. Imports for June were valued at $10,087,299, which contrasts with $8,651,843 for June of last year, a gain of 16.59 per cent. For the first six months of this year, exports were greater by 6.81 per cent., and

imports larger in value by 2.75 per cent., than for the corresponding period of 1926.

	Exports		Imports	
	1927	1926	1927	1926
January	$9,815,353	$8,778,282	$7,458,907	$7,638,176
February	8,068,810	6,138,151	7,202,241	7,078,874
March	9,594,903	8,286,758	9,173,511	7,488,493
April	9,146,566	9,273,015	8,616,217	10,391,076
May	8,270,812	8,505,764	8,651,408	8,571,033
June	7,919,400	6,592,712	10,087,299	8,651,843
	$52,815,844	$47,574,682	$51,189,583	$49,819,495

Grain exports from Baltimore during August were as follows: Flour, 68,509 barrels; wheat, 1,882,384 bushels; oats, 20,000 bushels; barley, 79,746 bushels; malt, 1,524 bushels—a total for the month of 1,983,654 bushels, as against 2,007,306 bushels for August, 1926. (Figures furnished by the Baltimore Chamber of Commerce.)

Grain exports for the first eight months of 1926 and 1927 follow:

		1927	1926
Flour	barrels	309,969	177,621
Wheat	bushels	14,454,299	9,308,121
Corn	"	578,433	2,301,738
Oats	"	115,100	987,980
Rye	"	817,224	258,263
Barley	"	1,700,138	2,722,753
Malt	"	1,524	6,412
		17,666,718	15,585,267

Collector of the Port Charles H. Holtzman furnishes the following statistics relative to Baltimore's foreign trade tonnage, a decrease in tonnage for entries of 42 per cent. and for clearance of 36 per cent. being recorded as against August, 1926.

	Entries	Tonnage	Clearances	Tonnage
August, 1927.....	131	390,713	138	408,083
August, 1926.....	228	672,453	221	639,677

The Calmar Steamship Corporation, controlled by the Bethlehem Steel Company, has organized a new fort-

nightly service between New York, Philadelphia and Baltimore and the Pacific Coast ports of Los Angeles, San Francisco and Seattle. Ten steamships will be used in this service.

FINANCIAL:

Bank clearings for August totaled $475,551,847.70, which compares with $495,226,748.41 for August, 1926, a loss of 3.97 per cent. Clearances for the first eight months of this year, together with percentage decrease, follow:

	1927	1926	% Decrease
First six months...	$2,808,079,717.78	$3,034,192,181.49	7.45
July	471,261,162.14	529,454,206.17	10.99
August	475,551,847.70	495,226,748.41	3.97
	$3,754,892,727.62	$4,058,873,136.07	7.49

Debits to individual account during the four weeks of August were $361,540,309.53, as reported by the Baltimore Clearing House Association. This compares with $371,990,132.91 for the corresponding period of last year, a loss of 2.81 per cent. The four weeks of August, 1926 and 1927, follow:

	1927		1926
August 4...	$99,746,629.87	August 4...	$109,432,989.68
August 11..	95,055,744.48	August 11..	84,194,479.99
August 18..	80,279,644.23	August 18..	98,655,749.16
August 25..	86,458,290.95	August 25..	79,706,914.08
	$361,540,309.53		$371,990,132.91

SUMMARY OF LOCAL TRADE BAROMETERS:

Local trade barometers noted in the foregoing pages may be summarized as follows: For August of this year, as against August, 1926: Bank clearings lost 3.9 per cent.; debits to individual account were lower by 2.8 per cent.; the value of building permits was lower larger by per cent.; building contracts lost 53.39 per cent.; 104 fewer steamships entered the local port; post office receipts were larger by 6.3 per cent.; July figures show the number of telephone calls fewer by 2.1 per

cent. than for July, 1926; electric power supplied to local industries gained 1 per cent.; industrial and commercial gas consumption increased by 4.9 per cent.; street car passengers were fewer by 4.2 per cent.; exports for June were larger in value by 6.8 per cent.; while imports were also greater in value by 2.7 per cent. than for the corresponding month of last year.

H. FINDLAY FRENCH,

Director, Industrial Bureau,
Baltimore Association of Commerce.

People's Counsel Exhibit No. 11

People's Counsel Exhibit No. 11

FILED
SEP 0 1927
PUBLIC SERVICE COMM. OF MARYLAND

#38.

Retail Trade

Reduction Is Caused In July Retail Trade By Seasonal Decline

Department Store Sales Averaged 3.7 Per Cent Smaller Than in Same Month Last Year.

The usual seasonal decline affected the retail merchandising trade in July, according to a final report for the month, made public August 30, by the Federal Reserve Board, which based its statement on reports from chain, department and mail-order stores.

Part of the reduction recorded for the month was attributable, the Board explained, to the fact that five Sundays occurred in the month of July this year, consequently allowing one less business day.

Department store sales, according to the Board's statement, averaged 3.7 per cent smaller than in July last year, although there were wide variations when the sales were examined by Federal Reserve Districts. The Philadelphia, Richmond, St. Louis and Dallas districts showed decreases ranging from 6 to 8 per cent, while some of the others were only 1 per cent below the average for July, 1926.

Smaller Than Last Year.

The full text of the Board's statement follows:

Distribution of merchandise to consumers, as indicated by sales of department stores, mail order houses and chain stores, was seasonally smaller in July than in June. Compared with July a year ago sales of department stores were slightly smaller owing to the fact that there were five Sundays in July of this year and consequently one less business day than in July, 1926. Sales of mail order houses and chain stores, on the other hand, which are influenced by changes in the number of operating units as well as changes in the volume of trade, were larger than in July of last year.

Percentage changes in the volume of sales of reporting firms in July, 1927, compared with the corresponding period in 1926 and the number of firms reporting are given in the following table:

	Percentage	No.
Department stores	—3.7	660
Mail Order houses	—2.8	4
Chains of stores:		
27 Grocery	+17.9	27,369
5 Five-and-ten cent	+7.1	2,420
9 Drug	+10.8	747
3 Cigar	—1.4	3,422
6 Shoe	—3.4	598
4 Music	—26.2	62
5 Candy	+0.3	277

While for the country as a whole department store sales were 3.7 per cent smaller than in July of last year, there were wide variations in the extent of the decline in different sections of the country. In the Philadelphia, Richmond, St. Louis and Dallas Federal reserve districts decreases varied from 6 to 8 per cent, while in the other districts the decline ranged from less than 1 per cent to 3.5 per cent.

Inventories Declined.

Inventories of merchandise carried by department stores continued to decline and at the end of the month averaged for the country as a whole slightly smaller than a year ago. Smaller stocks than in July of last year were reported by stores in the New York, Philadelphia, Atlanta, St. Louis, Minneapolis, Kansas City, and Dallas Federal reserve districts. In the other districts stocks were slightly larger.

After allowing for the usual decline that is customary in mid-summer, inventories of merchandise at the end of July were lower than at any time since August, 1926.

A larger decline in sales than in stocks in July resulted in a slightly lower rate of stock turnover than in July of last year. For the first seven months of the year as a whole, however, the rate of turnover continued slightly higher than in the corresponding period of 1926.

UNITED RAILWAYS AND ELECTRIC COMPANY.

Income and Surplus Accounts Years 1920 to 1926 taken from Annual Reports to the Commission.

	1920	1921	1922	1923	1924	1925	
Railway Operating Income	17,313,598.84	16,332,865.45	16,122,592.02	16,461,798.86	16,453,254.31	16,621,220.20	1
" " Expenses	11,330,841.48	10,781,974.38	10,429,122.02	10,622,402.60	10,637,925.63	10,776,811.37	1
Net Revenue -	5,982,757.36	5,550,891.05	5,693,470.00	5,839,396.26	5,815,328.68	5,844,408.83	
Taxes assignable to Railway Operation	1,839,420.92	1,710,109.29	1,740,512.49	1,800,335.31	1,656,073.68	1,632,386.08	1
Operating Income	4,143,336.44	3,840,781.76	3,952,957.51	4,039,060.95	4,159,255.00	4,212,022.75	4
Non Operating Income	120,740.63	104,179.29	156,246.22	160,028.82	145,975.98	120,814.99	
Gross Income	4,264,077.07	3,944,961.05	4,109,203.73	4,199,089.77	4,305,230.98	4,332,837.74	4
Rent for Leased Roads	361,038.00	361,038.00	361,038.00	361,038.00	529,360.11	551,013.92	
Interest on Funded Debt	2,589,420.32	2,672,489.17	2,696,131.25	2,652,495.00	2,652,495.00	2,652,495.00	2
" " Unfunded Debt	117,489.54	120,997.73	96,087.37	70,745.51	30,500.51	33,560.58	
Other Deductions	152,530.00	155,205.57	156,678.12	138,544.88	122,906.97	115,158.71	
Total deductions from Gross Income	3,220,477.86	3,309,730.47	3,309,934.74	3,222,823.39	3,335,262.59	3,352,228.21	3
Net Income	1,043,599.21	635,230.58	799,268.99	976,266.38	967,968.39	980,609.53	1
Surplus at beginning of year	345,057.74	1,165,026.88	1,515,158.77	1,553,097.83	1,844,963.58	1,980,817.52	2
Net Income for year	1,043,599.21	635,230.58	799,268.99	976,266.38	967,968.39	980,609.53	1
Other Credits	(1) 4,382,961.76	38,032.37	106,556.82	167,551.58	(3) 480,710.49	52,470.35	
Total Credits	5,771,618.71	1,838,289.83	2,420,984.58	2,696,915.79	3,293,642.46	3,013,897.40	3
Dividends paid, common		0	(2)409,224.00	(4) 818,448.00	(4) 818,448.00	(4) 818,448.00	(4)
Dividends paid, preferred	383.34	0	0	0	0	0	
Other Deductions	(2) 4,606,208.49	323,131.06	458,662.75		(4) 434,376.94	189,976.42	
Surplus at end of year	1,165,026.88	1,515,158.77	1,553,097.83	1,844,963.58	1,980,817.52	2,005,472.98	2

(1) Includes charge off to R. & E. for certain capital expenditures made in period January 1, 1904 to December 31, 1911. $4,015,998.75
(2) Includes write off of Income Bond coupons fundable under agreement of July 25, 1906. $3,920,000.
(3) Includes adjustment of Federal Taxes of prior years $304,053.76.
(4) Includes adjustment Power contract $140,358.30; Appropriations for notes held by bank, $205,000.00

UNITED RAILWAYS AND ELECTRIC COMPANY.

Income and Surplus Accounts Years 1920 to 1926 taken from Annual Reports to the Commission.

	1920	1921	1922	1923	1924	1925	1926
ng Income	17,515,598.84	16,332,865.43	16,122,592.02	16,461,798.86	16,453,254.31	16,621,220.20	16,715,709.07
Expenses	11,330,841.48	10,781,974.38	10,429,122.02	10,622,402.60	10,637,925.63	10,776,811.37	10,790,804.97
-	5,982,757.36	5,550,891.05	5,693,470.00	5,839,396.26	5,815,328.68	5,844,408.83	5,924,904.10
e to Railway Operation	1,839,420.92	1,710,109.29	1,740,512.49	1,800,335.31	1,656,073.68	1,632,386.08	1,672,316.22
come	4,143,336.44	3,840,781.76	3,952,957.51	4,039,060.95	4,159,255.00	4,212,022.75	4,252,587.88
ncome	120,740.63	104,179.29	156,246.22	160,028.82	143,975.98	120,814.99	139,568.81
	4,264,077.07	3,944,961.05	4,109,203.73	4,199,089.77	4,303,230.98	4,332,837.74	4,392,156.69
Roads	361,038.00	361,038.00	361,038.00	361,038.00	529,360.11	551,013.92	551,392.50
ed Debt	2,589,420.32	2,672,489.17	2,696,131.25	2,652,495.00	2,652,495.00	2,652,495.00	2,652,495.00
unded Debt	117,489.54	120,997.73	96,087.37	70,745.51	30,500.51	33,560.58	64,544.07
s	152,530.00	155,205.57	156,678.12	138,544.88	122,906.97	115,158.71	113,670.71
ions from Gross Income	3,220,477.86	3,309,730.47	3,309,934.74	3,222,823.39	3,335,262.59	3,352,228.21	3,382,102.28
	1,043,599.21	635,230.58	799,268.99	976,266.38	967,968.39	980,609.53	1,010,054.41
nning of year	345,057.74	1,165,026.88	1,515,158.77	1,553,097.83	1,844,963.58	1,980,817.52	2,005,472.98
ear	1,043,599.21	635,230.58	799,268.99	976,266.38	967,968.39	980,609.53	1,010,054.41
	(1) 4,382,961.76	38,032.37	106,556.82	167,551.58	(3) 430,710.49	52,470.35	44,559.23
s	5,771,618.71	1,838,289.83	2,420,984.58	2,696,915.79	3,233,642.46	3,013,897.40	3,060,086.62
common		0	(2)409,224.00	(4) 818,448.00	(4) 818,448.00	(4) 818,448.00	(4) 818,448.00
, preferred	383.34	0	0	0	0	0	0
n	(2) 4,606,208.49	323,131.06	458,562.75		(4) 434,376.94	189,976.42	220,775.22
f year	1,165,026.88	1,515,158.77	1,553,097.83	1,844,963.58	1,980,817.52	2,005,472.98	2,020,863.40

harge off to R. & E. for certain capital expenditures made in period January 1, 1904 to December 31, 1911. $4,015,998.75
rite off of Income Bond coupons fundable under agreement of July 25, 1906. $3,920,000.
djustment of Federal Taxes of prior years $304,053.76.
djustment Power contract $140,358.30; Appropriations for notes held by bank, $205,000.00

People's Counsel Exhibit No. 13

UNITED RAILWAYS AND ELECTRIC COMPANY.

Comparison of Net Income for the first and last six months periods of the years 1920 to 1926.

Year.	Net Income for year.	Net Income 1st 6 Mos.	Net Income 2nd 6 Mos.	Percentage 1st 6 Mos. to Total Income.	Percentage 2nd 6 Mos. to Total Income.
1920	1,045,650.66	460,362.01	585,288.65	44.026%	55.974
1921	620,046.57	234,828.58	385,217.99	37.873	62.127
1922	794,555.84	283,813.32	510,742.52	35.720	64.280
1923	894,169.50	397.411.64	496,757.86	44.445	55.555
1924	879,057.00	343,778.91	535,278.09	39.108	60,892
1925	919,331.80	369,750.81	549,580.99	40.220	59.780
1926	984,949.71	459,830.84	525,118.87	46.686	53.314
Average				41.154	58.846
1927 based on Average:	844,340.48	347,479.88	496,860.60	41.154	58.846
1927 based on highest percentage:(1922)	972,788.02	347,479.88	625,308.14	35.720	64.280
1927 based on lowest percentage: (1926)	744,291.39	347,479.88	396,811.51	46.686	53.314

Dividend Requirements 1927 (@ 4%) $818,448.00.

112

UNITED RAILWAYS AND ELECTRIC COMPANY.

Taxes paid for the years 1923 to 1926 and estimated taxes for the year 1927.

	1923	1924	1925	1926		1927 Total Estimated	1927 Actual Accruals First 6 Months
Park Tax	1,130,912.67	1,121,941.49	1,121,584.22	1,116,118.44	(A)	1,078,690.00	545,227.98
License and Gasoline Taxes	8,235.49	8,381.53	8,397.59	8,536.63	(B)	8,536.63	4,844.99
State, County and City	400,820.27	406,564.89	385,189.52	385,546.91	(C)	369,000.00	204,000.00
Baltimore, Sparrows Point & Chesapeake Ry.	12,956.16	3,270.80	3,643.90	3,786.60	(D)	3,786.60	2,566.10
Subway Rental	76,054.62	91,536.20	90,561.85	85,786.64	(B)	85,786.64	42,400.00
Federal Income	147,500.00	913.07		61,000.00	(D)	74,250.00	29,000.00
" Capital Stock	22,668.50	22,810.00	23,009.00	11,541.00		Repealed	
Miscellaneous War Taxes	1,187.60	653.70					
	1,800,335.31	1,656,073.68	1,632,386.08	1,672,316.23		1,620,047.87	828,041.07

(A) 6.7% of Estimated Passenger Revenue.
(B) Based on 1926 figures.
(C) See Sheet 2 of this Exhibit.
(D) " " 3 " " "

People's Counsel Exhibit No. 14

Sheet 2.

UNITED RAILWAYS & ELECTRIC COMPANY

Estimated State, County and City Taxes for 1927.

Property Taxes.

Actual Bills Received:-		
Baltimore City and Annex		$ 313,484.40
Baltimore County		26,879.63
		$ 340,364.03

Capital Stock Tax.

Assessment of 409,224 shares @ 1926 rate ($37.00)		$ 15,141,288.00
Less: 1927 Real Estate Assessment $13,951,115.00		
Tax paying shares (estimated at 1926 figures)	182,740.00	14,133,855.00
Net Assessment		$ 1,007,433.00
Assessment per share		$ 2.462

Taxes.

Baltimore City	371,633 shares @ $2.462	$9,149.60 @	$2.39	21,867.54
Annex	12,913 " " "	317.91 @	$1.8164	577.45
State	409,224 " " "	1,007,433@	$ .27 11/25	2,759.65
Other Localities (estimated)				1,700.00
Total Capital Stock Tax				$ 26,904.64

Other Taxes.	(Estimated)	$ 1,731.33
Total		$ 369,000.00

114

People's Counsel Exhibit No. 14

Sheet 3.

UNITED RAILWAYS & ELECTRIC COMPANY

Estimated Federal Income Taxes for 1927.

1st Six Months.

Net Income		$ 347,500.
Add adjustment of State, County and City taxes		6,000.
		$ 353,500.
Add Income Taxes deducted		29,000.
		$ 382,500.

2nd Six Months.

Estimated Net Income	$ 472,500.
	$ 855,000.
Less Maintenance charges in track reconstruction (charged to "Depreciation Expenditures" account - estimated)	$ 305,000.
	$ 550,000.
Tax at 13½%	$ 74,250.

People's Counsel Exhibit No. 15

UNITED RAILWAYS AND ELECTRIC COMPANY

Free Tickets of all descriptions issued in 1926.

	No. of Books.	No. of Coupons per Book.	Total No. of Coupons or Tickets.
Issued to Employees.			
Coupon Pass Books - Male	6451	100	645,100
" " " - "	4391	200	878,200
" " " - Female	2453	100	245,300
Association Coupon Pass Books - Male	50,000	50	2500,000
" " " " - Female	1200	50	60,000
Male Pass Tickets			53,630
Female " "			21,880
Male Emergency Tickets			29,210
Female " "			8,430
Shop Tickets A.M. and P.M.			49,000
Power " " " "			21,000
Transportation Tickets A.M. and P.M.			45,000
Maintenance of Way Tickets			720,000
Issued to Police Department for Plain Clothes Men:			
Baltimore City Police			252,000
" County "			12,000
Sparrows Point "			9,600
Issued to Park Concessionaires and Employees:			
Coupon Pass Books to Concessionaires	294	100	29,400
Bay Shore Tickets			71,745
Gwynn Oak Park Tickets			23,400
			5,674,895

People's Exhibit No. 16

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

EFFECT ON INCOME ACCOUNT

OF ISSUE OF 3-YR. NOTES OF MARCH 1, 1927 - $2,500,000 @ 6%
TO RETIRE 5-YR. NOTES DUE AUG. 1, 1927 - $2,500,000 @ 6%
(3 Yr. Notes Were Delivered Mar. 4/27)

	March (4th to 31st)	April	May	June	July	Total
Interest:						
5-Yr. Notes	5,967.51	6,519.32	6,423.93	6,384.00	6,354.33	31,649.09
3-Yr. Notes	11,250.00	12,500.00	12,500.00	12,500.00	12,500.00	61,250.00
Discount:						
5-Yr. Notes	2,188.87	1,148.27	1,132.50	1,119.87	1,112.67	6,702.18
3-Yr. Notes	2,427.53	2,427.53	2,427.53	2,427.53	2,427.53	12,137.65
Total - Charged to Deductions from Gross Income - -	21,833.91	22,595.12	22,483.96	22,431.40	22,394.53	111,738.92
Deduct amounts pertaining to 3-Yr. 6% Notes - Interest and Discount (as above) - - - - -	13,677.53	14,927.53	14,927.53	14,927.53	14,927.53	73,387.65
Duplication of Int. & Disc. in Deductions from Gross Income -	8,156.38	7,667.59	7,556.43	7,503.87	7,467.00	38,351.27
Credit: Interest on deposit of proceeds from sale of 3-Yr. 6% Notes, credited to Non-Operating Income -	3,566.62	4,019.18	4,087.41	3,930.41	4,041.06	19,644.68
Net duplication in Income Account	4,589.76	3,648.41	3,469.02	3,573.46	3,425.94	18,706.59

August 19, 1927.
Auditing Dept.

People's Counsel Exhibit No. 17

United Railways & Electric Company

Accident and Damage Accounts.

		Cost of Accidents and Claims, etc.		Charges to Income or provisions therefor.
1921		$ 570,700.10	(4%)	$645,890.06
1922		493,341.45	(4%)	636,401.84
1923		498,237.34	(3½%)	567,967.15
1924		525,424.27	(3½%)	527,787.22
1925		586,976.60	(")	533,153.42
1926	(Est.)	628,979.41	(")	535,727.49
Total		$ 3,303,659.17		$3,446,927.18

Excess of charges to income over cost of claims $ 143,238.01

Condition of Reserve for Injuries and Damages.

Dec. 31, 1920	$ 297,092.56
" " 1921	277,255.14
" " 1922	322,633.15
" " 1923	355,317.15
" " 1924	359,485.55
" " 1925	326,910.63
" " 1926	302,160.97
July 31, 1927	231,624.05

118

People's Counsel Exhibit No. 18

THE UNITED RAILWAYS AND ELECTRIC COMPANY

STATEMENT OF APPROXIMATE COST OF PAINTING CARS DIFFERENT EXTERIOR COLORS.

Approximate Cost of Painting exterior of our Standard Semi-Convertible Cars in Standard Color	$65.00
Car #5635 (Semi-Conv.) Painted American Vermillion and Cream. Approximate Cost Sample Car.	98.00
Car 5751 (Semi-Conv.) Painted Autumn Brown and Continental Buff with Red Band. Approximate Cost Sample Car.	96.00
Car 5694 (Semi-Conv.) Painted Standard Red and French Gray. Approxmiate Cost Sample Car.	85.00
Car 5771 (Semi-Conv.) Tohem Gray and Twilight Gray with Red Band Approximate Cost Sample Car	97.00
Car 5158 (Semi-Conv.) Malori Green and Cream with Orange Band. Approximate Cost Sample Car.	100.00
Car 5655 (Semi-Conv.) Masury Lake, Red Vermillion and Twilight Gray. Approximate Cost Sample Car.	97.00
Car 5690 (Semi-Conv.) Azure Blue and Cream with Vermillion Band. *Approximate Cost Sample Car. *Includes burning off side panels.	104.00
Car #5691 (Semi-Conv.) Pharohi Blue and Cream with Canary Yellow Band. *Approximate Cost Sample Car. *Includes burning off exterior.	112.00
Car 5645 (Semi-Conv.) Leather Brown Cream with Persian Green Band. Approximate Cost Sample Car	98.00
Car 5627 (Semi-Conv.) Desert Sand and Pyramid Grey and Cream with Red Band. *Approximate Cost Sample Car *Includes burning off side of car.	115.00
Car 8104 (Articulated Car) Standard Cadmium Yellow and Cream. Approximate Cost Sample Car.	150.00

119

People's Counsel Exhibit No. 19

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Effect of Variation of Fare on Revenue Passengers of Street Railway Companies

Data from A.E.R.A. Bulletin #116

Company and Period	FARE Amount	Increase or Decrease over Preceding Period	Per cent Increase or Decrease in Daily Average Revenue Passengers for Similar Month over Preceding Period
Cleveland Railway Company			
April 1917 to April 1918	4¢ - 3 tokens for 10¢		
to August 1918	4¢ - 7 tokens for 25¢	+	-1.6
to July 1919	5¢	+	+0.2
to December 1919	5¢ - 11 tokens for 50¢	-	+16.7
to May 1920	5¢ - 6 tokens for 25¢	-	---
to November 1920	5¢	+	---
to August 1922	6¢ - 9 tokens for 50¢	+	-16.1
to May 1925	5¢	-	+ 6.4
to September 1925	5¢ - 11 tokens for 50¢	-	+ 3.2
to December 1925	5¢	+	---
to September 1926	6¢ - 9 tokens for 50¢	+	- 9.7
Twin City Rapid Transit Company			
August 1919 to August 1920	5¢		
to August 1925	6¢	+	- 3.8
to January 1926	8¢ - 10 tokens for 60¢	+	-10.5
to September 1926	8¢ - 6 tokens for 40¢	+	- 7.3
United Railways Company of St. Louis			
June 1917 to June 1918	5¢		
to September 1919	6¢	+	- 3.7
to November 1919	7¢	+	+13.1
to April 1920	8¢ { 2 tokens for 15¢} { 7 tokens for 50¢} *{50 tokens for 3.50}	+	---
to August 1926	7¢	-	+ 7.6
Oklahoma Railway Company			
September 1919 to Sept. 1920	5¢		
to Oct. 1924	7¢ - 4 tokens for 25¢	+	- 9.2
to Sept. 1926	8¢ - 2 tokens for 15¢	+	-14.4

120

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Effect of Variation of Fare on Revenue Passengers of Street Railway Companies

Data from A.E.R.A. Bulletin #115

Company and Period	FARE: Amount	FARE: Increase or Decrease over Preceding Period	Per cent Increase or Decrease in Daily Average Revenue Passengers for Similar Month over Preceding Period
Dallas Railway and Terminal Company			
June to June 1920	5¢ - 22 tokens for $1.00		
to April 1926	6¢	+	+ 2.5
to September 1926	7¢ - 5 tokens for 30¢	+	- 4.6
Androscoggin and Kennebec Railway Co.			
---- to June 1918	5¢		
to August 1920	7¢	+	---
to April 1924	9¢ - 6 tokens for 50¢	+	- 2.0
to September 1926	10¢	+	-19.9
Birmingham Railway, Light and Power Co.			
to September 1919	5¢	+	
to January 1921	6¢	+	+13.1
to August 1921	7¢	+	-15.1
to September 1923	8¢ - 15 tokens for $1.00	+	-24.9
to September 1926	7¢ - 20 tokens for $1.20	-	+28.0
Nashville Railway and Light Company			
January 1919 to March 1920	5¢		
to May 1921	7¢ - 4 tokens for 25¢	+	-13.6
to September 1926	7¢	+	- 5.1
Connecticut Company (New Haven)			
October 1916 to September 1917	5¢		
to November 1919	6¢	+	-13.1
to May 1920	6¢ zoned	+	- 3.9
to November 1920	6¢ zoned	+	---
to March 1922	10¢	+	-17.3
to April 1923	10¢ - 3 tokens for 25¢	-	+17.4
to February 1924	10¢ - 2 tokens for 15¢	-	+ 1.3
to September 1926	10¢ - 3 tokens for 25¢	+	- 9.2
San Antonio Public Service Company			
December 1918 to November 1919	5¢ - free transfer		
to January 1920	5¢ - no transfer	+	- 2.7
to February 1920	5¢ - zoned	+	---
to August 1920	7¢ - free transfer	+	---
to November 1922	8¢ - 4 tokens for 30¢	+	- 5.4
to September 1926	6¢	-	+25.2

/2/

People's Counsel Exhibit No. 20

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Charles Street Bus Line.

Comparison of Effect of Fare Changes on Revenue Passengers.

Period	Fare Amount	Increase or Decrease over Preceding Period	Percent Increase or Decrease in Revenue Passengers over Preceding Period
November 1917 to November 1919	5¢		
to October 1919	6¢	+	+
to January 1920	7¢ - 2 tokens for 13¢	+	-
to June 1922	7¢	+	+
to Present	10¢	+	-

Revenue Passengers in Baltimore for Year Ending June 30, 1923

Compared with Year Ending June 30, 1922.

	1923	1922	Increase Total	Increase Percent
Rail Lines	238,419,297	232,187,216	[illegible]	+ [illegible]
Charles Street Bus	2,095,617	2,197,866	[illegible]	- [illegible]

People's Counsel Exhibit No. 21

EAST FAYETTE BUS ROUTE

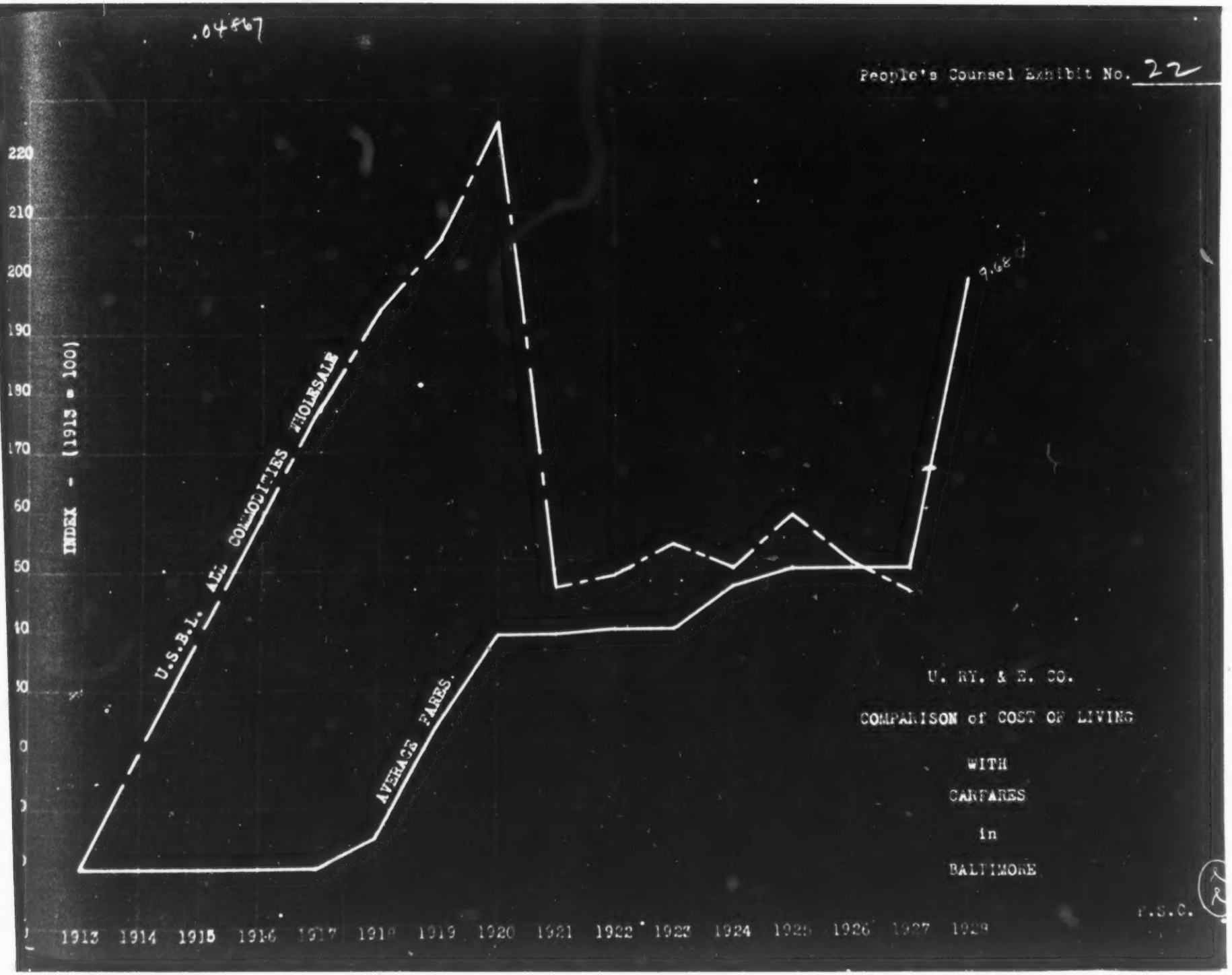
Revenue Passengers carried during the first 10 months of 1927 compared with the corresponding period of 1926.

	1926	1927	Increase 1927 over 1926
January	170,463	197,238	26,775
February	158,969	190,036	31,067
March	184,542	218,064	33,522
April	176,698	213,340	36,642
May	162,700	196,052	33,352
June	155,667	189,052	33,385
July	138,670	160,455	21,785
August	128,402	176,268	47,866
September	139,733	185,262	45,529
October	166,176	203,873	37,697
Total (10 months)	1,582,020	1,929,640	347,620
Percent of Increase		22.0%	
November	170,327		
December	209,325		
Total (Year)	1,961,672		

123

.04567

People's Counsel Exhibit No. 22



U. RY. & E. CO.

COMPARISON of COST OF LIVING

WITH

CARFARES

in

BALTIMORE

P.S.C.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Comparison between Cost of Living and Fares

1913 to 1927

Year	Wholesale all Commodities U.S.B.L.S.	Fare U.Ry.& E.Co.	Average Fare Per Revenue Passenger	
			Amount	Index
1913	100	5¢	$ .04367	100
1917	177	5¢	.04367	100
1918	194	10/1/18 - 6¢	.05124	105
1919	206	10/1/19 - 7¢ - 2 for 13	.06013	124
1920	226	1/1/20 - 7¢	.06753	139
1921	147	7¢	.06782	139
1922	149	7¢	.06807	140
1923	154	7¢	.06800	140
1924	150	5/26/24 -8¢ - 2 for 15	.0719	147
1925	159	8¢ " " "	.07316	150
1926	151	8¢ " " "	.07320	150
1927 (Estimated)	146	8¢ " " "	.07320	150
1928	---	Proposed 10¢	.0968	199

PRESENT FARES IN CITIES HAVING A POPULATION OF OVER 100,000

10¢ Base Fare

CITY	POPULATION	DATE EFFECTIVE	TICKET OR TOKEN RATE
Massachusetts			
Boston	781,529	7/1/27	4 for 25¢ on limited routes.
Cambridge	120,053	7/1/27	4 for 25¢ on limited routes
Fall River	129,662	10/1/26	9 for 50¢
Lowell	110,542	10/1/26	14 for $1.00
Lynn	103,147	10/1/26	17 for $1.00
New Bedford	120,494	5/13/27	4 for 25¢
Springfield	142,224	9/21/24	3 for 25¢
Worcester	192,242	2/6/21	---------
Ohio			
Cincinnati	409,333	11/1/25	3 for 25¢
Toledo	287,380	9/14/24	3 for 25¢
Pennsylvania			
Erie	112,571	8/15/27	6 for 50¢
Pittsburg	631,563	9/1/20	Sunday Pass - 25¢ 3 for 25¢; Weekly Pass $1.50
New York			
Albany	117,820	7/1/27	13 for $1.00
Buffalo	538,016	7/1/27	3 for 25¢
Syracuse	182,003	4/1/27	4 for 30¢; 6 for 45¢
Utica	101,604	8/18/26	10 for 75¢
Virginia			
Norfolk	159,089	1/3/27	8¢; Weekly Pass $1.50

CITY	POPULATION	DATE EFFECTIVE	TICKET OR TOKEN RATE
Washington			
Seattle	354,539	6/16/23	3 for 25¢
Spokane	108,897	2/1/26	7¢
Tacoma	104,456	5/1/27	3 for 25¢; Weekly Ticket 30¢ allows bearer to ride for 5¢
Connecticut			
Bridgeport	143,555	8/3/24	3 for 25¢
Hartford	160,197	2/10/24	3 for 25¢
New Haven	178,927	2/10/24	3 for 25¢
Texas			
Fort Worth	154,847	2/27/27	3 for 25¢; Weekly Identification Card 40¢, allows bearer to ride for 5¢
Houston	164,954	6/12/27	4 for 30¢; Weekly Identification Card 25¢, allows bearer to ride for 5¢
San Antonio	198,069	7/10/27	3 for 25¢; Weekly Permit 30¢, allows bearer to ride for 5¢
Iowa			
Des Moines	140,923	10/1/25	Weekly Pass - $1.25 Sunday Pass - ¢ .25
Michigan			
Grand Rapids	153,698	2/1/24	6 for 50¢
Nebraska			
Omaha	211,768	6/11/25	6 for 40¢
Utah			
Salt Lake City	130,948	5/23/26	3 for 25¢; 13 for $1.00 Weekly Pass: 1 zone $1.25 2 zone 1.75 3 zone 2.75

8¢ Base Fare

CITY	POPULATION	DATE EFFECTIVE	TICKET OR TOKEN RATE
Maryland			
Baltimore	796,296	6/1/24	2 for 15¢
Colorado			
Denver	290,911	3/16/21	2 for 15¢
Kansas			
Kansas City	115,781	5/1/27	2 for 15¢; 5 for 35¢; 15 for $1.00
Missouri			
Kansas City	367,481	5/1/27	2 for 15¢; 5 for 35¢; 15 for $1.00
Minnesota			
Minneapolis	425,435	1/1/26	6 for 40¢
St. Paul	246,001	1/1/26	6 for 40¢
Oklahoma			
Oklahoma City	101,150	10/1/24	2 for 15¢; Weekly Pass $1.25
Pennsylvania			
Philadelphia	1,979,364	9/25/24	2 for 15¢
Scranton	142,266	5/22/21	4 for 30¢
Oregon			
Portland	282,383	6/15/20	6 for 45¢; 50 for $3.65
Rhode Island			
Providence	267,918	5/27/24	5 for 35¢
New York			
Rochester	316,786	1/1/26	4 for 30¢
New Jersey			
Trenton	132,020	6/27/21	--------
D. C.			
Washington	497,906	11/1/23	3 for 20¢; 6 for 40¢ on cars
Delaware			
Wilmington	122,049	8/17/20	4 for 30¢
Ohio			
Youngstown	159,970	6/11/23	7 for 50¢

128

7¢ Base Fare

CITY	POPULATION	DATE EFFECTIVE	TICKET OR TOKEN RATE
Ohio			
Akron	208,435	11/12/24	4 for 25¢; 17 for $1.00
Cleveland	936,485	10/15/26	8 for 50¢
Georgia			
Atlanta	222,963	10/1/20	3 for 20¢
Alabama			
Birmingham	205,670	9/18/23	20 for $1.20
Illinois			
Chicago (Surface Lines)	2,995,239	6/15/22	3 for 20¢
Texas			
Dallas	194,450	4/15/26	5 for 30¢
Indiana			
Indianapolis	358,819	1/1/26	4 for 25¢
Kentucky			
Louisville	259,259	2/1/26	5 for 35¢
Tennessee			
Memphis	174,533	8/18/21	----------
Nashville	136,220	5/8/21	5 for 35¢
Wisconsin			
Milwaukee	509,192	6/27/20	8 for 50¢
Louisiana			
New Orleans	414,493	9/27/22	----------
California			
Oakland	255,700	5/16/27	5 for 35¢
Pennsylvania			
Reading	112,707	1/ /22	----------
Oklahoma			
Tulsa	124,478	1/10/21	4 for 25¢

6¢ Base Fare

CITY	POPULATION	DATE EFFECTIVE	TICKET OR TOKEN RATE
Ohio			
Canton	106,260	1920	6 for 35¢
Columbus	279,836	4/3/20	5 for 25¢
Minnesota			
Duluth	110,502	8/1/22	---------
Texas			
El Paso	104,929	11/26/21	---------
Virginia			
Richmond	186,403	8/1/20	5 for 30¢
Michigan			
Detroit	1,242,044	9/2/23	9 for 50¢

5¢ Base Fare

CITY	POPULATION	DATE EFFECTIVE	TICKET OR TOKEN RATE
New Jersey			
Patterson	141,695	10/1/23	-------
Camden	128,642	10/1/23	-------
Elizabeth	103,947	10/1/23	-------
Jersey City	315,280	10/1/23	-------
Newark	452,513	10/1/23	-------
Michigan			
Flint	130,316	-------	-------
Ohio			
Dayton	172,942	8/27/21	
California			
San Diego	106,047	1/1/23	$1.00 Weekly Pass, Good in city
Los Angeles	666,855	------	-------
San Francisco	557,530	------	-------
New York			
New York	5,927,625	------	-------
Yonkers	115,647	------	-------

People's Counsel Exhibit No. 25

COMPARISON OF RESULTS OF STREET RAILWAY OPERATION IN 1926 IN OTHER CITIES

COMPARABLE TO BALTIMORE

	Operating Revenue	Operating Expenses Depreciation and Taxes	Net Income	Rate of Return	Base	Fare	
Baltimore	$ 16,715,709	$ 12,463,121	$ 4,252,588	5.67	$ 75,000,000	8¢	2 for 15¢
Boston	35,371,330	27,987,033	7,384,297	4.64	159,025,142 (g)	10¢	4 for 25¢ (limited)
Chicago (c)	61,173,601	50,855,750	10,317,851	6.27	164,600,000	7¢	3 for 20¢
Cincinnati	8,065,297	6,657,892	1,512,418 (b)	4.16	36,381,017 (a)	10¢	3 for 25¢
Cleveland	18,133,454	16,619,210	1,614,244	4.35	37,106,506	7¢	8 for 50¢
Kansas City	9,676,325	9,252,138	424,187	1.82	23,300,000	8¢	15 for $1.00
Los Angeles (d)	15,568,340	13,912,481	1,655,859	3.06	54,000,000 (f)	5¢	
Philadelphia	50,331,441	37,427,237	12,904,204	5.97	216,000,000	8¢	2 for 15¢
Pittsburgh	21,727,230	17,705,956	4,021,274	5.85	68,170,000	10¢	3 for 25¢
St. Louis	18,641,871	16,445,136	2,428,298	4.66	52,024,192	8¢	2 for 15¢
San Francisco (e)	9,891,668	8,010,705	1,880,953	5.37	35,000,000 (f)	5¢	
Washington	10,681,519	8,336,450	2,345,069	4.69	50,000,000 (h)	8¢	6 for 40¢

(a) Fixed Capital as of December 31, 1926.

(b) Adjusted

(c) Surface Lines

(d) Los Angeles Railway Corp. and Pacific Electric Railway Company

(e) Market Street Railway Company

(f) Mean between historical and reproduction cost

(g) Total investment in physical property.

(h) Minimum comparable to court valuation of Capital Traction Company.

Appellee's Counsel Exhibit No. 26.

Probable Trend of Business in 1926 as Affecting Revenue of The United Railways and Electric Company of Baltimore.

In order to fix a proper rate of fare it is necessary to consider carefully the probable business of the company for next year. Various factors are at work, some tending toward improved conditions and other toward poor conditions. During the present year the revenues of the company have fallen off, largely on account of three factors: first, unemployment; second, weather conditions (particularly in the summer months), and third, automobile competition. General business conditions ought to determine the effect of the first of these factors on next year's business; the law of averages would militate in favor of increased riding next year so far as the weather has any effect; and a study of the automobile industry would throw some light on the probable effect of this competition.

It is interesting first to see what some authorities think of the outlook for business next year. President Coolidge's statement issued on October 17th last would indicate that the Federal governmental authorities look forward with no misgivings to the future. Prophecies of outstanding business organizations as disclosed in recent issues of their bulletins may be summarized as follows:

HARVARD ECONOMIC SERVICE	Outlook for business now generally favorable. Apparently little more than expected seasonal decline in activity has taken place this summer, and this let down in industry and trade will be followed by autumn expansion.
MOODY'S INVESTORS' SERVICE	Boom in business is likely to come before another depression.
BABSON STATISTICAL ORGANIZATION	Business men and investors should take a conservative position, but immediate outlook for business is moderately good.
NATIONAL CITY BANK	The absence of any fundamentally unfavorable factors affords ground for confidence.
GUARANTY TRUST COMPANY OF N. Y.	Ample support for belief that brisk revival is on way.
NATIONAL BANK OF COMMERCE IN N. Y.	Confidence in upturn of business has become fairly general.

The National Association of Manufacturers has given out a fairly optimistic picture of the future, as disclosed by the result of its annual survey of conditions in 22 lines of industry. Local contractors, who are wont to look to the amount of work coming out of architects' offices and projects upon which bids are asked, point to next year as having all the earmarks of the possibilities of increased activity in the building trades over this year. New industries are being brought to Baltimore at about the same rate as in the past, and existing industries are showing little tendency to retrenchment. The industrial electric power business has shown a healthy increase, as have telephone toll calls. Post office receipts, after a summer slump, are headed for last year's high points. The view is held in many quarters that the Mississippi flood of the past summer had a greater effect on Baltimore business than might be supposed. Whatever adverse effect it would have will be more than offset by improved conditions next year which will come with the recuperated purchasing power of the flood victims.

Automobile production has dropped off considerably during the present year, the probable output for 1927 being lower than for the past three years. If the new Ford car comes onto the market this year, production in 1928 will doubtless jump. There is some lag, however, between production and use, and hence the fewer machines manufactured this year would indicate less serious competition on the part of automobiles with street cars next year. The registration of automobiles in Maryland during the past two years would indicate that the peak of this automobile competition may be in sight. Lessened production this year would indicate that the peak of competition has been reached. Upon this basis, therefore, street car riding in 1928 should show a healthy increase over 1927.

From a review of all of these factors, and considering also the fact that 1928 will be a presidential year (although the effect of this on business is pretty generally discounted), I am of the opinion that 1928 will show an increase in revenue passengers unless an increased fare is granted which will offset all of the factors tending to improvement.

NOTE.

EXHIBIT NO. 27

Omitted by consent.

October 11, 1927

28

Seeks To Reassure ... As To Business Trend

... Alarmed Over Growing Pessi... Optimism In Which Nation's ... Is Stressed.

136

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Estimate of Passenger Revenue for 1928

Assuming 1% Increase (over 1927) in Full Fare Passengers

and Normal Trends in Other Passengers.

Allowing for a 1¢ Transfer Charge and Full Fare for Employees and Concessionaires.

	Revenue Passengers 1927 See Company Exhibit #24	Revenue Passengers 1928 Estimated	Present Fare	1928 Passenger Revenue
Full Fare	7,354,512	7,428,057	.08	$ 594,245
Token Fare	196,392,128	198,356,049	.07½	14,876,705
- Total -	203,746,640	205,784,106		$ 15,470,950
1st County	2,318,269	2,600,000	.04½	117,000
2nd County	268,655	270,000	.05	13,500
3rd County	44,979	45,000	.05	2,250
Bethlehem Steel	1,342,368	1,600,000	.05	80,000
Miscellaneous	7,992	8,000	---	300
- Total	3,982,263	4,523,000		$ 213,050
1/2 Fare	8,079,236	8,080,000	.04	323,200
School Tickets	3,658,757	3,860,000	.05	193,000
- Total	11,737,993	11,940,000		516,200
- GRAND TOTAL	219,466,896	222,247,106		$ 16,200,200
Transfers: Total	94,000,000			
Loss - 20%	18,800,000			
Net	75,200,000	@ $.01		752,000
Free Passengers Employees and Concessionaires				171,883
				$ 17,124,083

People's Counsel Exhibit No. [illegible]

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Average Loading and Transfer Passengers on Harford Road Cars 6-9 A.M. and 4-7 P.M. on Typical Peak Day.

Inbound - A.M.

	Average Passenger Per Car
Arriving - North Avenue	66
Leaving car at " "	12
Boarding " " " "	4
Leaving " "	58
Leaving car at Federal Street	5
Boarding " " " "	-
Leaving " "	53
Leaving car at Preston Street	3
Boarding " " " "	-
Leaving " "	50
Leaving car at Monument Street	-
Boarding " " " "	5
Leaving " "	55

Recapitulation

Total Pass.	Long Haul Transfers	Short Haul Transfers
66	12	4
4	5	5
5	3	9
75	20	

Outbound - P.M.

	Average Passenger Per Car
Arriving at Monument Street	50
Boarding car at " "	7
Leaving " " " "	-
Leaving " "	57
Leaving car at Preston Street	4
Boarding " " " "	5
Leaving " "	58
Leaving car at Federal Street	3
Boarding " " " "	5
Leaving " "	60
Leaving car at North Avenue	5
Boarding " " " "	11
Leaving " "	66

Recapitulation

Total Pass.	Long Haul Transfers	Short Haul Transfers
50	7	4
7	5	3
5	5	5
8	11	12
11	28	
70		

136

People's Counsel Exhibit No. 57

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Estimated Passenger Revenue for 1928 with 8¢ Full Fare and 5¢ County Fares.

	Revenue Passengers 1927 Company Exhibit #24	Revenue Passengers 1928 Estimated	Fare	Passenger Revenue
Full Fare	7,554,512	7,350,000	.08	
Token Fare	196,392,128	196,674,000	.08	
- Total -	203,746,640	204,024,000 *	.08	$ 16,321,920
1st County	2,318,269	2,600,000	.05	
2nd County	268,655	270,000	.05	
3rd County	46,979	45,000	.05	
Bethlehem Steel	1,342,368	1,600,000	.05	
Miscellaneous	7,992	8,000	.05	
- Total Commutation Fares -	3,982,263	4,523,000	.05	226,150
1/2 Fare	8,079,236	8,080,000	.04	323,200
School	3,658,757	3,960,000	.05	198,000
- GRAND TOTAL -	219,466,896	220,487,000	.0773	$ 17,064,270

* Based on 3.17% decrease over 1926, or same as experienced in last 9 months of 1927.

139

People's Counsel Exhibit No. 32

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Estimate of Net Income and Rate of Return for 1928

Based on Present Fares with Charges of 1¢ for

Transfers and Full Fare for Employees and Concessionaires

Passenger Revenue	$ 17,124,083
Other Revenue	235,000
- Total -	$ 17,359,083
Operating Expenses *	10,177,207
Depreciation - 5% of Revenue	867,954
Taxes: Property, etc. **	463,214
Park Tax 6.7% of Passenger Revenue	1,147,315
Income Tax	145,000
- Total -	12,800,690
Operating Income	4,558,393
Non-Operating Income ***	38,000
Available for Return	$ 4,596,393
Deductions	3,445,000
	$ 1,151,393
Rate Base	$ 75,000,000
Rate of Return	6.13%

* Estimate on Company Exhibit #24 $ 10,264,000
Deduct excess Power and Accident Costs 100,000
10,164,000
Add Adjustment for Fair Return 13,207
$ 10,177,207

** $[illegible] as per Company Exhibit #24 minus $75,000 minus $5,786

*** $171,000 - $133,000 (See Company Exhibit #24)

People's Counsel Exhibit No. [illegible]

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Comparison of Net Income Estimated for 1923

with Tests Applied by Commission in 1924.

Net Income Estimated for 1923 as shown by People's Counsel Exhibit No. 32	$ 1,151,[illegible]
Adjustments as per Company Exhibit No. 24	[illegible]
Net Income Comparable to Commission Tests	$ 1,[illegible]

Tests Applied by Commission in Previous Cases:

Minimum	$ 1,000,000
1-1/3 times Fixed Charges	1,148,[illegible]
Estimate in 1924	1,152,142
1-1/2 times Fixed Charges	1,722,[illegible]
Maximum	1,500,000

Net Required to Produce 6% on Present Fair Value:

$ 1,[illegible],000

People's Counsel Exhibit No. [illegible]

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Estimate of Earnings under Fares shown by Company Exhibit No. 24 — Corrected for Operating Expenses, Depreciation and Taxes.

	1928 as shown in company's Exhibit # 24	Revised 1928 Estimated	
Passenger Revenue	$ 20,156,000	$ 20,156,000	
Other Revenue	235,000	235,000	
Total Revenue	$ 20,391,000	$ 20,391,000	
Operating Expenses	10,394,000	10,164,000	(a)
Depreciation	2,200,000	1,020,000	(b)
Taxes: Property etc.	542,000	467,000	(c)
Mark Tax (6.7% Passenger Revenue)	1,350,500	1,336,000	(d)
Income Tax	355,000	510,000	
Total Deductions	$ 14,841,500	$ 13,497,000	
Net Operating Income	5,549,500	6,894,000	
Non-Operating Income	171,000	171,000	(d)
Gross Income	5,720,500	7,065,000	
Deductions	3,445,000	3,445,000	
Net Income	2,275,500	3,620,000	
Amount Available for Return	5,578,079	6,936,000	
Rate Base	75,000,000	75,000,000	
Rate of Return	7.44%	9.25%	

(a) Operating Expenses:

1927 Estimated	$9,868,944
Additional Power	90,000
" Accident	75,000
" Wages	130,056
	10,164,000

(b) 5% of Total Revenue

(c) $75,000 deducted. Deduct $4000 for "Return"

(d) 6.63% Passenger Revenue

(e) $36,000 included in "Return"

142

People's Counsel Exhibit No. 35

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Estimate of Earnings for Years 1928, 1929, 1930 Based on Company's Estimate of Future Trends.

Continuation of Company Exhibit No. 24.

	1928 10¢ Fare as Proposed by Company	1929 10¢ Fare as Proposed by Company	1930 10¢ Fare as Proposed by Company	1930 11¢ Base Fare
Passenger Revenue	$ 20,156,000	$ 19,551,320 (a)	$ 18,964,770 (a)	$ 20,348,159 (e)
Other Revenue	235,000	235,000	235,000	235,000
- Total -	$ 20,391,000	$ 19,786,320	$ 19,199,770	$ 20,583,159
Operating Expenses	10,407,207	10,433,135 (b)	10,458,804 (b)	10,458,804
Depreciation	2,200,000	2,220,000 (c)	2,240,000 (c)	2,240,000
- Total -	$ 12,607,207	$ 12,653,135	$ 12,698,804	$ 12,698,804
Net Operating Revenue	7,783,793	7,133,185	6,500,966	7,884,355
Taxes - Property, etc.	538,214	548,000 (d)	558,000 (d)	558,000
Park Tax - 6.7% Passenger Revenue	1,350,500	1,309,938	1,270,640	1,363,327
Income Tax	355,000	271,322	190,000	364,308
- Total	2,243,714	2,129,260	2,018,640	2,285,635
Operating Income	5,540,079	5,003,925	4,482,326	5,598,720
Non-Operating Income	38,000	38,000	38,000	38,000
Net Available for Return	$ 5,578,079	$ 5,041,925	$ 4,520,326	$ 5,636,720
Rate Base (Co. Exhibit No. 23, Continued)	$ 78,500,000	$ 79,000,000	$ 79,500,000	$ 79,500,000
Rate of Return	7.11%	6.38%	5.68%	7.08%

(a) Based on 3% Decrease

(b)

	$ 10,407,207	$ 10,433,135
Less 1%	104,072	104,331
	$ 10,303,135	$ 10,328,804
Wage ~~Income~~ Increase	130,000	130,000
	$ 10,433,135	$ 10,458,804

(c) 4% added on $500,000 net additions to capital

(d) $10,000 added per year.

(e) Based on 5% decrease, corrected for 11¢ instead of 10¢ fare.

People's Counsel Exhibit No. 36

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Results of Operations in 1927 Compared to Operations in 1922

	1922	1927 See Company's Exhibit #7-C	1927 * Corrected for 1922 Operating Costs
Operating Revenue	$ 16,122,592	$ 16,246,109	$ 16,246,109
Operating Expenses and Depreciation	10,429,123	10,921,249	10,195,997
Taxes	1,740,512	1,626,472	1,626,472
- Total -	$ 12,169,635	$ 12,547,721	$ 11,822,469
Operating Income	$ 3,952,957	$ 3,698,388	$ 4,423,640
Non-Operating Income	156,246	171,000	171,000
- Total -	$ 4,109,204	$ 3,869,388	$ 4,594,640
Deductions	3,309,935	3,445,000	3,445,000
- Net Income -	$ 799,269	$ 424,388	$ 1,149,640

* 1922 Operating Expenses $ 10,429,123
Economies Claimed by Company since 1922 1,200,000

9,229,123
Increased Wages - 3¢ per hr. 390,000
Increased Cost of Operations** 3% 276,874

$ 10,195,997

** Based on increase shown by construction cost trend.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

COMPARISON OF COSTS OF SUPERINTENDENCE IN 1926 AND 1925

ACCOUNT	1926 ACTUAL SUPERINTENDENCE	1926 ACTUAL OTHER EXPENSES	INCREASE 1926 OVER 1925 SUPERINTENDENCE	%	INCREASE 1926 OVER 1925 OTHER EXPENSES	%
Ways and Structures	$ 66,356	$ 786,176	$ 2,685	4.0	$ -117,147	-14.9
Equipment	35,433	882,297	6,292	17.7	41,550	4.7
Power	20,213	1,451,114	-631	- 3.1	54,148	3.8
Transportation	463,886	4,751,148	11,101	2.4	-66,214	-1.4
Traffic	5,488	Cr. 1,324	-625	-11.4	8,934	---
General and Miscellaneous *	138,366	1,390,416	12,436	9.0	51,361	3.7
Transportation for Investment	-----	Cr. 14,570	----	---	5,403	---
- T O T A L -	$ 729,742	$ 9,225,277	$ 31,255	4.3	$ -21,985	-.2

* This includes Salaries and Expenses of General Officers only.

People's Counsel Exhibit No. 38

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

ANNUAL DEPRECIATION ALLOWANCE EQUIVALENT TO

COMPANY'S CLAIMS FOR CONDITION OF PROPERTY AS OF DECEMBER 31, 1933.

	Cost to Reproduce New	Accrued Depreciation Per Cent	Age	Per Cent Average Annual Depreciation	Average Annual Depreciation	Total Depreciation
Depreciable Property						
Track and Roadway	21,134,963	14.28	15	.952	201,211	
Bridges, Trestles and Culverts	1,281,419	18.33	20	.916	12,747	
Electric System	6,370,907	9.57	10	.957	61,003	
Buildings	5,915,713	7.45	20	.372	22,044	
Cars	18,603,205	10.16	15	.677	125,956	
Station Equipment	2,007,831	9.43	10	.943	18,952	
Miscellaneous "	894,169	24.74	10	2.474	22,122	
- TOTAL -	56,208,207	11.749	14.232	0.825	464,035	6,604,116
Land and Right of Way	2,596,381	0.00	0.00	0.00	000	
Total Physical Property	58,804,588	11.2306	14.232	0.789	464,035	
Overheads	18,274,663	0.00	0.00	0.00	000	
Total, Physical Property and O.H.	77,079,251	8.56795	14.232	0.602	464,035	

People's Counsel Exhibit No. 39

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

ANNUAL DEPRECIATION ALLOWANCE EQUIVALENT TO

COMMISSION'S FINDING OF CONDITION OF PROPERTY AS OF DECEMBER 31, 1927.

	Cost to Reproduce New	Accrued Depreciation Per Cent	Age	Per Cent Average Annual Depreciation	Annual Depreciation $	Total Depreciation $
Depreciable Property						
Track and Roadway	20,114,934	17.77	15	1.184	238,311	
Bridges, Trestles and Culverts	1,281,419	18.00	20	.900	11,533	
Electric System	5,874,655	10.90	10	1.09	64,018	
Buildings	5,715,797	13.92	20	.696	39,795	
Cars	18,111,897	15.15	15	1.01	182,909	
Station Equipment	2,007,831	11.69	10	1.169	23,478	
Miscellaneous	894,169	24.76	10	2.476	22,142	
- Total -	54,000,702	15.63	14.5	1.078	582,186	8,441,250
Land and Right of Way	1,996,990	0.00	0.00	0.00	000	
- Total Physical Property -	55,997,692	15.074	14.5	1.0396	582,186	
Overheads	12,483,993	0.00	0.00	0.00	000	
- Total Physical Property & O.H. -	68,481,685	12.326	14.5	0.85	582,186	

People's Counsel Exhibit No. 40

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Annual Depreciation Allowance Based On

Percentages Considered in Valuation Case No. 533.

Original Cost Claimed by Company as of December 31, 1923	$ 68,158,908
Book Additions to December 31, 1926 Averaged for Year 1926	2,545,412
Total Original Cost - Average for 1926	$ 70,704,320
.602% (See People's Counsel Exhibit No. 38) of $70,704,320 =	$ 425,640
.85% (See People's Counsel Exhibit No. 39) of $70,704,320 =	$ 600,987

These annual depreciation allowances of $425,640 and $600,987, respectively on these bases, are high in view of the fact that the original cost actually includes some going value and claimed easements which were not used in arriving at the percentages.

148

UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Operating Revenues, Expenses, Non-Operating Revenues, Deductions from Gross Income and Net Income for the first six months of the Years 1926 and 1927.

Account No.	Classifications	January 1926	January 1927	February 1926	February 1927	March 1926	March 1927	April 1926	April 1927	19
I.	Operating Income									
I.	Revenue from Transportation									
101	Passenger Revenue	1,386,091.31	1,387,103.04	1,276,414.46	1,[illegible]	1,[illegible]	1,404,726.18	1,403,874.01	1,381,000.66	1,448,
103	Special Car Revenue	135.80	572.50	265.30	140.50	279.20	258.75	473.20	432.00	2,
104	Mail Revenue	5,601.43	5,697.02	5,305.85	5,659.52	6,045.34	6,042.33	5,827.88	5,806.42	5,
109 (a)	Conscience Fund	5.00	.16	-	281.15	-	2.00	-	-	
(b)	Other Miscel. Transp.Revenue	-	-	-	-	-	-	-	311.69	
		5,742.23	6,269.68	5,571.15	6,081.17	6,324.54	6,303.08	6,307.08	6,553.11	7,
	Total Revenue from Transportation	1,392,453.54	1,393,776.72	1,281,985.61	1,[illegible]	1,[illegible]	1,411,028.26	1,410,181.09	1,387,553.77	1,452,
II.	Revenue from Other Ry. Operations									
110 (a)	Car Advertising	8,213.33	8,213.33	8,213.33	8,213.33	8,216.34	8,217.34	8,213.33	8,217.33	8,
(b)	Station Privileges	8.16	12.28	12.96	12.32	16.44	10.80	13.00	10.55	
111	Parcel Room Receipts	-	-	-	-	-	-	-	-	
116	Rent of Equipment	-	-	-	-	-	-	-	-	
117	Rent of Buildings and Other Prop.	1,598.14	1,517.74	1,576.92	1,530.25	1,650.10	1,648.00	1,[illegible]	1,502.60	1,
118	Power Sold	640.35	627.41	527.85	580.36	803.91	601.19	1,055.87	431.89	1,
119	Miscellaneous Revenue	437.57	1,582.26	588.75	1,130.47	807.17	1,[illegible]	982.1[illegible]	1,871.04	
	Total Revenue from Other Ry. Operations	10,933.55	11,952.01	10,919.11	11,[illegible]	11,[illegible]	11,[illegible]	11,[illegible]	12,013.51	11,
	Total Operating Revenues	1,403,387.09	1,405,728.73	1,292,904.72	1,[illegible]	1,[illegible]	1,422,[illegible]	1,421,[illegible]	1,399,567.28	1,464,
	Operating Expenses									
I.	Ways & Structures (Details Sheet 4)	77,077.31	87,156.00	81,704.10	70,342.[illegible]	75,384.07	7[illegible]	76,381.80	7[illegible]	79,
II.	Equipment (" " 4)	75,994.89	77,[illegible]	79,654.[illegible]	69,731.91	81,[illegible]	75,[illegible]	80,[illegible]	79,[illegible]	78,
III.	Power (" " 5)	139,488.42	147,[illegible]	122,[illegible]	114,[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	114,
IV.	Conducting Transp.(" " 5)	432,033.16	441,[illegible]	403,[illegible]	404,[illegible]	447,856.03	446,214.59	433,803.47	446,[illegible]	449,
V.	Traffic (" " 6)	6,018.72	4,[illegible]	1,[illegible]	[illegible]	[illegible]	[illegible]	7,[illegible]	[illegible]	14,
VI.	General & Miscel. (" " 6)	122,[illegible]	127,[illegible]	116,[illegible]	120,[illegible]	125,732.10	128,[illegible]	121,[illegible]	123,[illegible]	124,
VII.	Transp. For Investment Cr. " 6)	459.07	1,[illegible]	393.86	[illegible]	1,[illegible]	1,084.26	1,033.99	1,736.15	
	Total Operating Expenses	857,[illegible]	849,[illegible]	800,[illegible]	781,[illegible]	864,647.14	881,[illegible]	840,[illegible]	[illegible]	808,
	Depreciation	70,169.35	70,[illegible]	64,[illegible]	[illegible]	72,[illegible]	71,[illegible]	71,[illegible]	69,[illegible]	73,
	Total Operating Expenses (Including Depreciation)	923,502.17	919,453.11	865,[illegible]	841,[illegible]	937,[illegible]	9[illegible]	917,[illegible]	915,[illegible]	882,
	Net Operating Revenue	479,884.92	486,[illegible]	427,[illegible]	[illegible]	[illegible]	489,[illegible]	503,[illegible]	[illegible]	582,

UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Operating Revenues, Expenses, Non-Operating Revenues, Deductions from Gross Income and Net Income for the first six months of the Years 1926 and 1927.

January		February		March		April		May		June		Total 6 mos. to June 30.	
1926	1927	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927
										1,361,155.80	1,313,602.21	8,316,898.19	8,123,045.87
,091.31	1,387,103.04	1,276,414.46	1,25 ,98 .9	1,1 ,8 .38	1,403,726.18	1,403,834.01	1,381,006.56	1,445,116.23	1,3 ,567.93	3,690.50	4,467.75	6,898.00	7,214.00
135.80	872.30	265.30	140.50	279.20	258.75	472.20	432.00	2,028.30	1,341.50	5,830.18	5,809.65	34,287.98	34,675.52
5,601.43	5,697.02	5,305.85	5,659.52	6,048.34	6,042.33	5,827.88	5,806.42	5,677.30	5,638.58	-	20.15	5.00	273.46
5.00	.16	-	281.19	-	2.00	-	-	-	-	20.00	-	20.00	311.69
-	-	-	-	-	-	-	311.69	-	-	9,540.68	10,297.55	41,210.98	42,474.67
5,762.23	6,269.08	5,571.15	6,081.17	6,327.54	6,303.08	6,307.08	6,550.11	7,705.30	7,000.08				
2,453.54	1,385,370.72	1,281,985.61	1,269,1 .12	1,4 ,0 .32	1,413,028.36	1,410,141.09	1,387,559.67	1,452,821.53	1,381,528.01	1,370,696.48	1,327,899.76	8,350,109.17	8,165,520.54
9,213.33	9,213.33	9,217.33	9,217.33	9,217.34	9,217.34	9,213.33	9,217.33	9,217.33	9,217.33	9,213.34	9,213.34	55,292.02	55,290.00
9.16	12.85	10.96	10.82	16.44	10.80	13.00	10.55	10.91	12.62	10.87	11.82	82.10	71.09
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	1,502.08	1,316.10	1,908.22	2,509.44
1,598.14	1,517.74	1,570.92	1,530.25	1,580.10	1,548.00	1,501.11	1,502.00	1,388.58	1,554.38	1,411.44	1,481.31	9,419.29	9,206.15
640.38	687.41	667.20	603.08	603.21	601.16	1,047.7	431.89	1,121.82	888.27	1,431.86	1,881.39	4,979.33	5,899.97
437.57	1,668.38	589.75	1,198.57	327.13	1,422.1	388.58	1,211.34	385.78	1,096.21				
10933.56	11,9 .91	10,9 .16	11,8 .22	11,8 .22	11,8 .60	12,0 .91	11,8 .72	11,4 .91		17,001.06	17,814.39	111,726.65	72,026.65
2,387.09	1,4 ,4 .53	1,2 ,0 .77	1,2 ,6 .77	1,4 ,7 .16	1,4 ,3 .16	1,4 ,2 .31	1,3 ,3 .16	1,4 ,7 .16	1,4 ,0 .82	1,384,7 .56	1,3 ,0 .16	8,4 ,8 .82	8,2 ,5 .19
77,077.31	67,156.00	81,704.10	70,849.	78,984.07	7 ,7 .03	78,481.80	71,889.41	78,014.36	76,205.14	77,0 .36	77,0 .89	461,256.31	436,822.02
78,994.89	78,0 .41	79,054.81	69,731.91	81,1 .32	79,7 .03	80,8 .40	78,2 .32	76,7 .15	78,5 .82	79,040.56	76,909.55	471,203.32	459,560.83
39,468.42	137,0 .03	124,022.00	114,609.86	1 ,1 .56	1 ,1 .86	116,1 .29	113,0 .45	114,640.40	117,501.10	115,9 .11	115,8 .81	744,051.77	711,264.98
32,038.16	141,0 .19	402,2 .12	404,3 .75	447,856.03	446,214.59	433,803.47	436,1 .82	449,2 .85	442,1 .35	438,4 .02	426,4 .91	2,6 ,7 .26	2,6 ,2 .72
2,018.72	4,4 .41	1,0 .93	2,1 .09	2,7 .48	1,3 .27	7,0 .26	6,8 .00	11,1 .19	1,1 .47	1,196.22	9,344.45	31,944.98	39,272.29
22,204.39	167,5 .40	116,0 .1	1 ,7 .71	125,792.10	1 ,9 .84	1 ,0 .84	1 ,0 .91	1 ,1 .40	1 ,0 .73	128,1 .33	126,8 .56	759,142.47	758,311.55
459.07	1,0 .91	393.56	9 .01	1,1 .39	1,0 .26	1,033.99	1,7 .15	9 .72	1,8 .65	1,420.20	1,841.58	5,385.53	9,101.56
53,3 .62	849,1 .83	800,9 .09	7 ,1 .73	8 ,5 .14	8 ,5 .69	8 ,2 .82	8 ,0 .44	8 ,0 .40	8 ,3 .17	836,331.69	828,620.29	5,060,224.58	5,009,405.83
70,169.35	7 ,2 .28	54,647.24	8 ,7 .27	77,0 .26	71,0 .00	71,0 .24	69,9 .96	7 ,2 .01	7 ,1 .14	59,187.98	58,952.71	421,391.79	411,877.35
23,502.17	919,453.11	855,562.32	9 ,6 .73	9 ,0 .40	9 ,6 .26	9 ,7 .07	9 ,9 .38	9 ,0 .84	9 ,6 .81	899,579.67	892,473.00	5,482,316.37	5,421,283.19
72,884.92	4 ,8 .42	4 ,2 .43	4 ,0 .27	4 ,7 .74	4 ,9 .35	5 ,0 .84	4 ,6 .60	5 ,5 .41	4 ,6 .81	434,177.09	444,581.15	2,945,519.45	2,816,834.00

UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Operating Revenues, Expenses, Non-Operating Revenues, Deductions from Gross Income and Net Income for the first six months of the Years 1926 and 1927.

Account No.	Classifications	January		February		March		April		May	
		1926	1927	1926	1927	1926	1927	1926	1927	1926	1927
	Net Operating Revenue Brought Forward	479,884.92	485,872.42	427,382.45	426,011.57	523,711.74	499,280.65	504,616.94	485,593.80	525,745.41	476,954.21
215	Taxes Assignable to Railway Operations										
	(a) Park Tax	94,918.52	93,462.06	87,394.55	84,393.30	98,774.05	94,570.40	95,922.68	93,075.32	97,803.06	92,460.21
	(b) License	719.36	736.68	707.38	680.15	731.44	742.54	770.94	849.56	764.02	906.48
	(c) Taxes (State, City and County)	32,000.00	38,000.00	30,000.00	36,000.00	34,000.00	32,500.00	32,500.00	32,500.00	32,500.00	32,500.00
	(d) " (B.S.P. & C. Ry. Co. Bonds)	226.39	-	305.58	278.63	183.65	581.68	204.14	1,138.31	1,737.47	545.74
	(e) Rental of Subway	7,400.00	7,000.00	7,400.00	7,000.00	7,400.00	7,100.00	7,400.00	7,100.00	7,400.00	7,100.00
	(f) Federal Corporation Tax	-	5,000.00	-	-	5,000.00	6,000.00	5,000.00	6,000.00	6,000.00	6,000.00
	(g) " Capital Stock Tax	1,923.00	-	1,923.00	-	1,923.00	-	1,923.00	-	1,923.00	-
		137,187.27	144,198.74	127,730.51	128,352.08	148,012.14	141,464.62	143,720.76	140,663.19	148,127.55	139,512.43
	Operating Income	342,697.65	341,673.68	299,651.94	297,659.49	375,699.60	357,786.23	360,896.18	342,930.61	377,617.86	337,441.78
II.	Non-Operating Income										
203	Income from Lease of Road	1,052.62	1,052.62	1,052.62	1,052.62	1,052.62	1,052.62	1,052.62	1,052.62	1,052.62	1,052.62
204	Miscellaneous Rent Income	-	-	-	-	-	-	-	-	-	-
206	Dividend Income	1,978.16	1,978.16	1,978.17	1,978.17	1,978.17	1,978.17	1,978.16	1,978.16	1,978.17	1,978.17
207	Income from Funded Securities	1,809.16	2,776.04	1,809.17	2,776.04	1,809.17	2,776.05	2,296.66	3,279.79	2,296.67	3,279.79
208	" from Unfunded Securities & Accts.	-	-	-	-	-	-	-	-	-	-
	(a) Interest on Bank Deposits	299.16	381.14	364.48	355.31	952.87	4,552.80	219.86	4,524.67	339.42	4,546.14
	(b) Interest and Discount	268.83	288.23	420.73	750.17	593.25	466.71	804.33	539.15	842.15	519.56
209	Interest on Sinking Fund & Other Reserves	1,653.33	1,976.67	1,653.34	1,976.67	1,858.36	2,002.57	1,813.33	2,010.00	1,813.33	2,010.00
211	Contributions from Others	-	-	-	-	-	-	-	-	-	-
212	Miscellaneous Income	-	2,096.87	-	2,096.88	-	2,096.87	-	2,096.88	-	2,096.87
	Total Non-Operating Income	7,061.26	10,549.73	7,268.51	10,985.86	8,244.44	14,925.79	8,164.96	15,481.27	8,313.37	15,383.14
	Gross Income	349,758.91	352,223.41	306,920.45	308,645.35	383,944.04	372,712.02	369,061.14	358,411.88	385,931.23	353,824.92
III.	Deductions from Gross Income										
216	Rent of Leased Roads										
	(a) Int. on B.S.P. & C. Ry. Co.'s Bonds	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00
	(b) " " Md. Elec.Rys.Co.'s Bonds-1st Mtge. 5%	15,278.17	14,574.00	15,278.17	14,574.00	15,278.16	14,574.00	14,932.34	14,215.67	14,932.33	14,215.67
	(c) Int. on Md. Elec.Rys.Co.'s Bonds-Series A 6½%	21,219.79	21,003.12	24,219.79	21,003.13	21,219.80	21,003.12	21,219.79	21,003.13	21,219.79	21,003.12
	(d) Int. on Md. Elec.Rys. Co.'s Bonds-Series B 6½%	1,809.16	2,776.04	1,809.17	2,776.04	1,809.17	2,776.05	2,296.66	3,279.79	2,296.67	3,279.79
		45,807.12	45,853.16	45,807.13	45,853.17	45,807.13	45,853.17	45,948.79	45,998.59	45,948.79	45,998.58
217	Miscellaneous Rents										
	(a) Ground Rents	655.87	655.87	37.50	37.50	-	-	384.38	384.38	130.00	130.00
	(b) Right of Way	100.00	100.00	400.00	25.00	189.89	-	68.75	68.75	25.00	26.00
	(c) Int. on Beth. Steel Co.'s Const.Sp.Pt.	260.39	352.19	260.39	352.19	260.39	352.19	260.39	352.19	260.39	352.19
		1,016.26	1,108.06	697.89	414.69	70.50	352.19	713.52	805.32	[illegible].39	[illegible].19
	Deductions from Gross Income Forward	46,823.38	46,961.22	46,505.02	46,267.86	[illegible]	46,205.36	46,662.31	46,803.91	[illegible].18	46,503.77

People's Counsel Exhibit No. 41

UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Operating Revenues, Expenses, Non-Operating Revenues, Deductions from Gross Income and Net Income for the first six months of the Years 1926 and 1927.

January		February		March		April		May		June		Total 6 mos. to June 30	
1926	1927	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927.
479,884.92	485,872.42	427,382.45	426,011.57	523,711.74	499,250.65	504,616.94	483,593.80	525,745.41	476,954.21	484,177.99	444,581.15	2,945,519.45	2,816,264.00
94,918.52	93,462.06	87,394.55	84,393.30	98,774.05	94,570.40	95,922.68	93,075.32	97,803.06	92,460.21	91,907.38	87,266.69	566,720.24	545,227.98
719.36	736.68	707.38	680.15	731.44	742.54	770.94	849.56	764.02	906.46	761.92	929.68	4,455.06	4,844.99
32,000.00	38,000.00	30,000.00	36,000.00	34,000.00	32,500.00	32,500.00	32,500.00	32,500.00	32,500.00	32,500.00	32,500.00	193,500.00	204,000.00
226.39	-	305.58	278.63	185.65	581.68	204.14	1,136.31	1,737.47	548.74	181.10	53.74	2,838.33	2,598.10
7,400.00	7,000.00	7,400.00	7,000.00	7,400.00	7,100.00	7,400.00	7,100.00	7,400.00	7,100.00	7,300.00	7,100.00	44,300.00	42,400.00
-	5,000.00	-	-	5,000.00	6,000.00	5,000.00	6,000.00	5,000.00	6,000.00	6,000.00	6,000.00	22,000.00	29,000.00
1,923.00	-	1,923.00	-	1,923.00	-	1,923.00	-	1,923.00	-	1,926.00	-	11,541.00	-
137,187.27	144,198.74	127,730.51	128,352.08	148,012.14	141,464.62	145,720.76	140,663.19	146,127.55	139,512.43	140,576.40	133,850.01	845,354.63	828,041.07
342,697.65	341,673.68	299,651.94	297,659.49	375,699.60	357,786.23	360,896.18	342,930.61	377,617.86	337,441.78	343,601.59	310,731.14	2,100,164.82	1,988,222.93
1,052.62	1,052.62	1,052.62	1,052.62	1,052.62	1,052.62	1,052.62	1,052.62	1,052.62	1,052.62	1,052.62	3,203.35	6,315.72	8,466.45
-	-	-	-	-	-	-	-	-	-	-	-	-	-
1,978.16	1,978.16	1,978.17	1,978.17	1,978.17	1,978.17	1,978.16	1,978.16	1,978.17	1,978.17	1,978.17	1,978.17	11,869.00	11,869.00
1,809.16	2,776.04	1,809.17	2,776.04	1,809.17	2,776.05	2,296.66	3,279.79	2,296.67	3,279.79	2,296.67	3,279.79	12,317.50	18,167.50
-	-	-	-	-	-	-	-	-	-	-	-	-	-
299.16	381.14	354.48	355.31	952.87	4,552.80	219.86	4,524.67	330.43	4,546.14	814.65	5,144.80	2,971.45	19,504.86
268.83	286.23	420.73	750.17	593.25	466.71	804.33	539.15	842.15	619.58	500.33	767.95	3,429.62	3,431.76
1,653.33	1,976.67	1,653.34	1,976.67	1,656.36	2,002.57	1,813.33	2,010.00	1,813.33	2,010.00	2,041.27	2,267.16	10,635.92	12,233.07
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	2,096.87	-	2,096.88	-	2,096.87	-	2,096.88	-	2,096.87	-	2,106.36	-	12,593.75
7,061.26	10,549.73	7,468.51	10,985.86	8,244.44	14,925.79	8,164.96	15,481.57	8,313.37	15,883.14	8,685.67	16,756.60	47,937.21	88,583.97
349,758.91	352,223.41	306,920.45	308,645.35	383,944.04	372,712.02	369,061.14	358,411.88	385,931.23	353,324.92	352,288.26	327,487.74	2,147,901.03	2,074,485.32
7,500.00	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00	45,000.00	45,000.00
15,278.17	14,574.00	15,278.17	14,574.00	15,278.16	14,574.00	14,932.34	14,215.67	14,932.33	14,215.67	14,932.33	14,215.66	90,631.50	86,369.00
21,219.79	21,003.12	24,219.79	21,003.13	21,219.80	21,003.12	21,219.79	21,003.13	21,219.79	21,003.12	21,219.79	21,003.13	127,318.75	126,018.75
1,809.16	2,776.04	1,809.17	2,776.04	1,809.17	2,776.05	2,296.66	3,279.79	2,296.67	3,279.79	2,296.67	3,279.79	12,317.50	18,167.50
45,807.12	45,853.16	45,807.13	45,853.17	45,807.13	45,853.17	45,948.79	45,998.59	45,948.79	45,998.58	45,948.79	45,998.58	275,267.75	275,555.25
655.87	655.87	37.50	37.50	-	-	384.38	384.38	130.00	130.00	-	-	1,207.75	1,207.75
100.00	100.00	400.00	25.00	189.89	-	68.75	68.75	25.00	25.00	178.50	178.50	582.36	398.25
260.39	352.19	260.39	352.19	260.39	352.19	260.39	352.19	260.39	352.19	260.39	352.19	1,562.34	2,113.14
1,016.26	1,108.06	697.89	414.69	70.50	352.19	713.52	805.32	[illegible]0.39	[illegible]0.19	438.89	530.69	3,352.45	3,719.14
46,823.38	46,961.22	46,505.02	46,267.86	[illegible]7.63	46,205.36	46,662.31	46,803.91	[illegible]4.18	46,503.77	46,387.68	46,529.27	278,620.20	279,274.39

UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Operating Revenues, Expenses, Non-Operating Revenues, Deductions from Gross Income and Net Income for the first six months of the years 1926 and 1927.

at — Classifications	January		February		March		April		May	
	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927
uctions from Gross Income Brought Forward	46,823.38	46,961.22	46,505.02	46,267.86	46,877.62	46,305.36	46,662.31	46,802.91	46,364.13	46,502.77
220 Interest on Funded Debt										
(a) Interest (Coupon)	145,765.00	145,765.00	145,765.00	145,765.00	145,765.00	145,765.00	145,765.00	145,765.00	145,765.00	145,765.00
(b) " on Funding Bonds	16,333.33	16,333.33	16,333.34	16,333.34	16,333.34	16,333.34	16,333.33	16,333.33	16,333.33	16,333.33
(c) " " Income Bonds	46,666.67	46,666.67	46,666.67	46,666.67	46,666.66	46,666.66	46,666.67	46,666.67	46,666.67	46,666.67
(d) " " 5 Yr. 6% Gold Notes(1927)	12,500.00	12,500.00	12,500.00	12,500.00	12,500.00	7,217.51	12,500.00	6,519.32	12,500.00	6,423.93
(e) " " 3 Yr. 6% " " (1930)	-	-	-	-	-	11,250.00	-	12,500.00	-	12,500.00
	221,265.00	221,265.00	221,265.01	221,265.01	221,265.00	227,232.51	221,265.00	227,784.32	221,265.00	227,688.93
221 Interest on Unfunded Debt	3,888.76	4,349.48	3,862.52	5,847.99	6,229.79	7,696.75	5,342.72	7,040.34	5,244.19	5,926.73
222 Amortization of Disc. on Funded Debt	4,934.52	4,903.00	4,924.52	4,903.00	4,924.52	7,332.52	4,924.52	6,291.93	4,924.52	6,270.16
227 Income Transferred to Other Companies	-	-	-	-	-	-	-	-	-	-
228 Miscellaneous Debits	-	-	-	-	-	-	-	-	-	-
(a) Commission for paying Coupon Interest	300.00	300.00	1,939.60	1,939.60	680.08	680.08	137.50	137.50	1,054.38	1,054.38
(b) Federal Tax (Bond Interest)	1,675.00	1,804.60	67.63	79.25	1,303.30	1,306.31	8,929.50	8,603.46	1,468.08	1,292.29
(c) B. C. & C. Taxes on Income Bonds	750.00	750.00	750.00	750.00	750.00	750.00	750.00	750.00	750.00	750.00
	11,537.28	11,869.08	11,544.27	13,521.84	13,887.69	17,764.67	20,084.24	22,822.30	13,441.17	15,293.56
Total Deductions from Gross Income	279,623.66	280,095.30	279,314.30	281,054.71	281,030.32	291,302.54	288,011.55	297,411.18	281,070.30	289,485.26
t Income transferred to Profit and Loss	70,135.25	72,128.11	27,600.15	27,890.64	102,917.72	81,309.48	81,043.59	61,000.72	104,860.08	67,229.66

People's Counsel Exhibit No. 41

Sheet #3

UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Operating Revenues, Expenses, Non-Operating Revenues, Deductions from Gross Income and Net Income for the first six months of the Years 1926 and 1927.

January		February		March		April		May		June		Total 6 mos. to June 30	
	1927	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927
.38	46,961.22	46,505.02	46,267.86	45,877.63	46,205.36	46,662.31	46,803.91	46,364.13	46,503.77	46,387.68	46,529.27	278,620.20	279,274.39
.00	145,765.00	145,765.00	145,765.00	145,765.00	145,765.00	145,765.00	145,765.00	145,765.00	145,765.00	145,765.00	145,765.00	874,590.00	874,590.00
.33	16,333.33	16,333.34	16,333.34	16,333.34	16,333.34	16,333.33	16,333.33	16,333.33	16,333.33	16,333.33	16,333.33	98,000.00	98,000.00
.67	46,666.67	46,666.67	46,666.67	46,666.66	46,666.66	46,666.67	46,666.67	46,666.67	46,666.67	46,666.66	46,666.66	280,000.00	280,000.00
.00	12,500.00	12,500.00	12,500.00	12,500.00	7,217.51	12,500.00	6,519.32	12,500.00	6,422.93	12,500.00	6,384.00	75,000.00	51,544.76
-	-	-	-	-	11,250.00	-	12,500.00	-	12,500.00	-	12,500.00	-	48,750.00
.00	221,265.00	221,265.01	221,265.01	221,265.00	227,238.51	221,265.00	227,784.32	221,265.00	227,688.93	221,264.99	227,648.99	1,327,590.00	1,352,884.76
.76	4,349.48	3,862.52	5,847.99	6,225.79	7,696.75	5,342.72	7,040.04	5,244.19	5,926.73	5,173.67	6,039.41	29,734.65	36,900.40
.52	4,905.00	4,924.52	4,905.00	4,924.52	7,332.53	4,924.52	6,291.93	4,924.52	6,276.16	4,924.52	6,263.53	29,547.12	35,974.15
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-
.00	300.00	1,939.60	1,939.60	680.08	680.08	137.50	137.50	1,054.38	1,054.38	318.30	315.05	4,429.86	4,426.61
.00	1,564.60	67.63	79.25	1,303.30	1,305.31	8,929.50	8,603.46	1,468.08	1,292.29	204.85	200.22	13,648.36	13,045.13
.00	750.00	750.00	750.00	750.00	750.00	750.00	750.00	750.00	750.00	750.00	750.00	4,500.00	4,500.00
.28	11,869.08	11,544.27	13,521.84	13,883.69	17,764.67	20,084.24	22,822.93	13,441.17	15,299.56	11,371.34	13,568.21	81,859.99	94,846.29
.66	280,095.30	279,314.30	281,054.71	281,026.32	291,202.54	288,911.55	297,411.16	281,070.35	289,495.26	279,024.01	287,746.47	1,688,070.19	1,727,005.44
.25	72,128.11	27,606.15	27,590.64	102,917.72	81,509.48	81,049.59	61,000.72	104,860.88	63,529.66	73,261.25	41,721.27	459,830.84	347,479.88

UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Operating Expenses by Months for First Six Months of Years 1926 and 1927 and Totals for Same Period.

Account No.	Classification	January 1926	January 1927	February 1926	February 1927	March 1926	March 1927	April 1926	April 1927	May 1926	May 1927
	Operating Expenses										
I.	Way and Structures										
	Maintenance of Way										
1	Superintendance of Way - Salaries	1,191.26	1,967.70	[illegible]	[illegible]	[illegible]	3,422.31	[illegible]	3,361.80	4,001.19	2,721.76
	" " " - Expenses	61.28	12.70	316.18	287.60	7.12	7.12	166.30	89.66	110.62	192.95
2 - 11]	Track & Roadway - Labor	26,846.10	26,988.19	22,928.29	23,098.14	25,141.97	20,210.07	28,634.47	31,442.20	31,124.98	29,163.31
12 - 19)	" " " - Material	12,327.49	14,701.90	11,270.86	15,624.67	12,677.03	17,148.42	18,082.66	17,935.21	15,114.67	22,926.51
12	Salt, Snow and Ice	7,130.66	2,882.63	17,304.69	15,699.67	136.67	88.37	38.62	13.61	-	3.84
15	Bridges, Trestles and Culverts	4,376.31	3,004.68	2,551.98	1,382.28	4,800.23	3,322.09	5,369.34	5,444.84	5,202.62	3,049.37
		55,823.72	51,560.93	59,197.25	56,210.73	50,640.97	54,214.28	57,126.89	58,238.86	55,636.28	58,016.74
	Maintenance of Power Distribution										
1	Supt. of Power Distribution - Salaries	1,647.62	1,555.87	1,672.48	1,847.69	1,647.60	1,613.96	1,361.89	1,772.61	1,721.90	1,760.78
	" " " " - Expense	-	-	-	-	-	-	-	-	-	-
20	Poles and Fixtures	731.16	330.24	1,093.21	851.52	1,740.36	637.96	928.64	291.72	1,626.97	455.49
21	Underground Conduits	195.39	51.78	189.98	241.91	367.96	32.04	186.16	136.07	41.00	96.88
22	Distribution System - Labor	6,900.77	4,210.07	6,577.36	5,115.61	6,496.01	4,429.36	6,881.71	4,115.81	6,315.77	4,804.89
23	" " - Material	3,336.23	1,789.79	3,256.83	1,599.82	3,686.36	2,502.37	2,140.80	932.05	2,899.56	1,733.15
23	Miscellaneous Electric Line Expenses	2,381.30	1,494.89	1,756.92	1,384.89	2,372.97	1,522.97	2,528.44	1,130.48	1,795.49	1,439.99
		15,192.47	9,532.64	14,546.78	11,041.44	16,331.26	10,378.56	12,795.84	8,381.47	14,410.71	10,332.58
24	Buildings Fixtures and Grounds	6,661.12	6,092.43	8,030.07	6,097.38	7,011.84	7,782.49	5,439.07	7,049.08	5,982.93	7,855.52
		77,077.31	67,156.00	81,764.10	70,349.55	73,984.07	72,375.33	75,361.80	73,669.41	76,013.98	76,205.14
29	Equalization - Ways and Structures	-	-	-	-	-	-	-	-	-	-
	Total Ways & Structures	77,077.31	67,156.00	81,764.10	70,349.55	73,984.07	72,375.33	75,361.80	73,669.41	76,013.98	76,205.14
II.	Equipment										
	Rolling Stock										
29	Supt. of Rolling Stock & Shops-Salaries	3,117.26	2,371.35	3,065.25	3,084.19	3,021.26	3,037.83	3,088.90	3,192.27	2,743.63	3,293.25
29	" " " " " " -Expenses	12.22	12.78	77.08	112.25	96.47	98.71	48.29	80.57	170.53	72.39
31 & 32	Car Body and Trucks - Labor	32,926.82	24,915.93	22,121.55	23,167.51	24,468.91	25,582.11	24,054.17	27,921.41	21,957.16	24,375.48
31 - 32	" " " " - Material	11,556.64	10,823.21	15,099.20	13,709.69	13,128.44	13,791.37	13,773.14	15,038.54	14,339.96	11,991.91
31 - 32	Car Painting - Labor	5,720.84	6,073.05	5,865.39	5,573.69	6,443.27	6,506.79	6,464.82	6,103.31	6,063.51	5,922.44
31 - 32	" " - Material	2,012.12	2,196.64	1,915.59	1,776.33	2,454.17	2,177.40	2,243.86	2,081.76	2,322.21	1,986.46
33	Electrical Equipment - Labor	10,441.31	9,018.29	10,044.38	8,985.04	11,303.34	9,236.29	10,260.05	8,646.42	10,171.54	9,526.91
33	" " - Material	6,761.03	6,736.90	7,056.49	4,539.42	8,437.40	4,924.50	8,313.88	5,247.32	7,712.59	4,573.95
		62,548.24	62,748.15	65,244.93	61,044.12	66,349.25	65,361.00	66,217.10	64,301.60	65,498.13	61,742.79
	Miscellaneous										
36	Shop Machinery and Tools - Labor	468.79	417.25	503.74	190.72	419.27	277.55	325.10	238.53	262.41	145.41
36	" " " " - Material	417.93	93.92	234.50	248.46	186.35	116.76	271.60	14.91	492.01	36.99
37	Shop Expense - Labor	7,151.43	7,756.36	6,345.32	7,085.14	7,146.43	8,198.53	7,298.30	7,937.55	8,498.29	7,649.63
37	" " - Material	2,391.00	3,100.89	2,215.88	1,880.64	2,916.40	2,196.25	2,325.84	2,106.79	1,970.15	1,782.19
38(a)	Horses and Harnesses	-	-	-	-	-	-	-	-	-	-
(b)	Vehicles	2,588.61	4,128.34	546.98	826.95	4,238.04	3,230.39	3,374.27	5,003.85	4,036.79	3,879.07
39	Other Miscellaneous Equip. Expenses	428.89	75.30	563.00	111.78	119.18	6.96	525.24	44.35	30.37	131.24
		13,446.66	15,572.06	10,409.42	8,687.79	15,075.67	14,026.46	14,061.35	15,341.78	13,290.02	13,823.53
44	Equalization Equipment	-	-	-	-	-	-	-	-	-	-
	Total Equipment	75,994.89	78,320.21	75,654.35	69,731.91	81,424.92	79,387.46	80,278.45	79,643.38	78,790.15	75,568.32

UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Operating Expenses by Months for First Six Months of Years 1926 and 1927 and Totals for Same Periods.

January		February		March		April		May		June		Total 6 mos. to June 30	
1926	1927	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927
4,181.16	3,907.70	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	4,681.15	4,721.76	2,798.09	3,160.85	23,152.75	20,691.45
61.88	19.76	316.16	207.65	[illegible]	7.11	183.00	88.00	118.62	186.95	39.18	210.16	759.51	861.35
28,846.10	26,988.19	22,925.29	26,595.14	29,114.97	30,211.07	30,634.47	31,442.20	31,124.98	29,163.31	30,837.51	30,383.97	170,509.32	171,282.88
12,327.49	14,[illegible].90	11,276.56	10,824.67	13,[illegible].62	17,146.42	18,[illegible].63	17,935.21	15,114.67	22,925.51	15,299.82	18,105.24	85,747.20	101,542.95
7,170.66	2,[illegible].83	17,304.83	10,[illegible].87	14.[illegible]	85.87	38.82	13.61	-	3.84	-	-	24,537.24	12,997.60
4,376.31	3,[illegible].66	2,5[illegible].98	[illegible].98	4,80[illegible].83	5,3[illegible].30	5,[illegible].34	5,4[illegible].54	5,203.83	3,043.37	8,020.85	4,032.43	30,064.54	23,727.36
55,823.72	51,[illegible].93	59,197.25	52,[illegible].73	50,[illegible].97	54,[illegible].88	57,[illegible].89	56,[illegible].86	55,[illegible].28	58,016.74	56,991.45	56,[illegible].65	334,790.56	331,104.19
1,647.62	1,[illegible].87	1,672.48	1,847.69	1,647.80	1,[illegible].96	1,[illegible].08	1,772.61	1,721.00	1,760.78	1,563.64	1,638.86	9,614.33	10,309.77
-	-	-	-	-	-	-	-	-	-	-	-	-	-
731.16	330.24	1,093.21	851.52	1,740.36	637.96	925.64	291.76	1,636.97	455.49	1,807.08	1,237.20	7,934.42	3,804.16
195.39	51.78	189.98	241.91	387.96	[illegible].04	138.18	138.07	41.00	96.58	-	1.85	972.49	560.23
6,900.77	4,810.07	6,577.36	5,115.61	5,436.01	4,439.[illegible]	5,[illegible].71	4,11[illegible].81	5,[illegible].77	4,804.89	5,718.72	4,613.61	35,230.34	27,301.95
3,336.23	1,789.79	3,256.83	1,899.82	3,686.36	2,502.37	2,140.80	932.05	2,899.58	1,735.15	2,411.38	1,913.56	17,731.18	10,472.74
2,381.30	1,494.89	1,756.92	1,[illegible].89	[illegible].97	[illegible].97	2,528.44	1,130.48	1,795.49	1,439.99	1,214.66	1,286.29	12,049.78	7,909.51
15,192.47	9,532.64	14,546.78	11,041.44	16,[illegible].26	10,[illegible].56	12,795.84	8,[illegible].47	14,410.71	10,332.88	12,[illegible].48	10,691.37	85,[illegible].54	60,358.35
6,651.12	6,092.43	8,030.07	6,[illegible].38	7,[illegible].84	7,788.49	5,433.07	7,049.08	5,982.93	7,855.52	5,[illegible].12	10,482.57	39,[illegible].21	45,359.47
77,077.31	67,156.00	81,764.10	70,[illegible].55	73,984.07	72,[illegible].33	73,[illegible].80	73,669.41	76,013.98	76,205.14	77,[illegible].05	77,066.59	461,256.31	436,822.02
-	-	-	-	-	-	-	-	-	-	-	-	-	-
77,077.31	67,156.00	81,764.10	70,349.55	73,984.07	72,[illegible].33	73,[illegible].80	73,669.41	76,013.98	76,205.14	77,[illegible].05	77,066.59	461,256.31	436,822.02
3,117.26	2,971.35	3,065.25	3,084.19	3,021.25	3,[illegible].83	3,[illegible].90	3,192.27	2,747.63	3,293.25	2,[illegible].79	2,927.42	17,825.08	18,502.31
12.22	12.78	77.08	112.25	96.47	[illegible].71	46.26	[illegible].57	[illegible].33	72.39	42.98	76.30	447.56	453.00
32,926.82	24,915.93	22,121.55	23,167.51	24,468.91	25,[illegible].11	24,054.17	24,921.41	21,953.16	24,375.48	22,[illegible].02	24,[illegible].48	138,086.63	146,621.92
11,556.64	10,823.21	15,099.20	13,709.69	13,128.44	13,731.37	13,[illegible].14	15,[illegible].54	14,339.96	11,991.91	11,336.52	11,614.56	79,233.90	76,969.28
5,720.84	6,073.05	5,865.39	5,[illegible].69	6,443.27	6,506.79	6,464.82	6,103.31	6,083.51	5,922.44	6,[illegible].58	6,[illegible].61	36,885.51	36,[illegible].89
2,012.12	2,196.64	1,915.59	1,776.33	2,454.17	2,177.40	2,243.86	2,081.76	2,323.21	1,986.46	2,394.58	1,998.14	13,343.53	12,216.73
10,441.31	9,018.29	10,044.38	8,[illegible].04	11,303.34	9,236.29	10,260.05	8,646.42	10,171.54	9,526.91	10,[illegible].80	10,867.89	62,[illegible].12	55,980.84
5,781.03	6,736.90	7,056.49	4,[illegible].42	5,[illegible].40	[illegible].34.50	5,313.88	5,247.32	7,712.69	4,573.95	9,476.17	4,387.89	42,753.56	30,405.98
62,548.24	62,748.15	65,244.93	61,044.12	66,249.25	65,[illegible].00	66,217.10	64,301.60	65,498.13	61,742.79	65,[illegible].24	62,726.29	390,981.89	377,925.95
486.79	417.25	503.74	190.72	419.27	277.58	326.10	238.53	262.41	145.41	[illegible].84	180.19	2,214.95	1,450.65
417.93	93.92	234.50	246.46	186.35	116.78	271.60	14.91	492.01	36.99	[illegible].30	37.33	1,894.29	546.39
7,151.43	7,756.36	6,345.32	7,[illegible].14	7,146.43	8,198.53	7,258.30	7,933.55	8,498.29	7,849.53	6,[illegible].50	7,559.71	40,[illegible].27	46,392.92
2,391.00	3,100.89	2,215.88	1,880.64	2,916.40	2,196.25	2,328.84	2,106.79	1,970.15	1,782.19	2,[illegible].22	1,541.22	14,390.56	12,597.98
-	-	-	-	-	-	-	-	-	-	-	-	-	-
2,588.61	4,128.34	546.98	826.95	4,288.04	3,230.39	3,374.27	5,[illegible].85	4,038.79	3,879.07	4,[illegible].15	4,838.20	19,451.84	20,252.90
428.89	75.30	563.00	111.78	119.19	6.96	525.24	44.15	30.37	131.24	39.84	24.61	1,705.52	394.04
13,446.65	15,572.05	10,409.42	8,687.79	15,075.67	14,026.46	14,081.35	15,[illegible].78	13,[illegible].02	13,823.00	13,916.32	14,181.26	80,221.43	81,634.88
-	-	-	-	-	-	-	-	-	-	-	-	-	-
75,994.89	78,320.21	75,654.35	69,731.91	81,424.92	79,[illegible].46	80,[illegible].45	79,643.38	78,790.15	75,568.32	79,[illegible].56	76,909.55	471,203.32	459,560.83

UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Operating Expenses by Months for First Six Months of Years 1926 and 1927 and Totals for Same Period.

Account No.	Classification	January 1926	January 1927	February 1926	February 1927	March 1926	March 1927	April 1926	April 1927	May 1926	May 1927
III.	**Power**										
	Maintenance										
45	Supt. - Salaries	359.67	243.00	359.67	243.00	353.66	243.00	244.32	251.33	243.00	251.33
45	" - Expenses	72.56	46.37	242.66	156.31	103.60	283.06	71.47	171.87	61.81	118.60
46	Power Plant Bldgs., Fixtures & Grounds	77.78	34.38	78.35	223.44	52.24	112.45	20.48	136.14	61.73	124.88
47	" " Equipment - Labor	85.30	87.00	121.28	87.00	120.65	87.00	85.30	87.00	90.81	87.00
47	" " " - Material	59.08	31.95	82.40	22.74	62.32	17.34	147.53	60.01	26.19	95.54
48	Sub-Station Equipment - Labor	515.37	764.86	788.64	1,107.74	954.09	849.62	843.05	705.15	671.65	527.27
48	" " " - Material	1,106.87	806.92	342.87	318.90	811.91	673.48	3,332.46	400.22	756.00	388.85
49	Transmission System	945.22	456.28	390.47	731.01	1,317.37	931.60	1,306.17	436.29	2,279.87	262.65
		3,223.85	2,470.76	2,406.34	2,890.14	3,781.84	3,177.56	6,050.78	2,270.01	4,191.06	1,852.12
	Service										
45	Supt. - Salaries	964.92	1,525.54	1,001.79	1,530.38	1,008.12	1,710.67	1,028.20	1,431.31	1,090.02	1,283.27
45	" - Expenses	72.55	46.55	242.67	156.30	104.14	313.92	71.47	175.11	61.80	118.69
52	Power Plant Employees	2,026.16	1,592.26	1,823.69	1,448.78	1,982.62	1,608.58	1,898.21	1,581.11	1,547.82	1,612.33
53	Fuel for Power	1,289.88	1,245.33	1,361.99	1,151.60	1,369.56	1,218.17	1,154.41	1,227.40	1,321.40	1,228.40
54	Water for Power	-	-	-	-	-	-	-	-	-	-
55	Lubricants for Power	76.79	-	-	77.59	[illegible]	-	-	-	77.59	83.38
56	Power Plant Supplies and Expenses	26.90	38.14	54.83	-	38.31	82.86	20.13	10.45	62.94	32.26
57	Sub-Station Employees	8,000.88	8,124.94	7,408.18	7,559.52	8,171.69	8,327.01	7,804.42	8,086.76	8,086.92	8,272.86
58	" " Supplies and Expenses	282.59	404.69	179.79	130.38	373.82	395.72	484.06	204.95	490.34	395.97
59	Power Purchased	123,503.90	113,859.82	108,543.32	99,369.57	119,940.08	106,112.87	120,084.81	101,363.15	97,710.51	10,611.82
		136,244.57	126,837.27	120,616.26	111,419.09	135,040.11	119,779.00	132,115.21	114,080.24	110,443.34	11,649.98
	Total Power	139,468.42	129,308.03	123,022.60	114,309.23	138,821.95	122,956.56	138,165.99	116,350.25	114,634.40	11,501.10
IV.	**Conducting Transportation**										
	Car Service										
63	Superintendance - Salaries	37,054.06	39,082.06	35,684.58	37,361.34	36,865.18	39,372.98	37,961.61	39,589.83	40,236.63	41,282.37
63	" - Expenses	152.07	157.83	46.22	47.93	177.62	312.54	127.31	220.96	278.46	32.66
64	Passenger-Conductor & Motorman	333,176.85	339,905.08	308,101.78	310,285.45	343,556.89	344,077.21	339,851.61	334,526.06	346,386.17	34,318.05
65	Mail Service-Conductor & Motorman	2,774.72	2,825.72	2,556.92	2,612.90	2,956.56	2,939.46	2,847.86	2,675.78	2,777.32	1,806.88
		373,158.70	381,970.69	346,391.50	350,307.62	383,542.25	387,308.29	378,788.11	377,213.83	389,678.58	384,419.96
	Miscellaneous Transportation										
66	Miscellaneous Car Service Employment	598.80	258.91	631.96	254.40	580.26	334.40	778.76	380.00	367.02	214.40
67 (a)	" " " Expense	4,324.11	3,080.49	4,127.54	3,504.40	4,595.87	3,965.76	3,834.30	3,489.54	3,856.86	3,713.56
67 (b)	Car Cleaning Supplies	937.15	1,234.68	744.88	470.23	1,113.95	840.74	472.20	1,381.42	1,100.95	1,240.86
67 (c)	Secret Service and Inspection	7,779.01	7,553.19	7,255.94	6,625.70	7,397.81	6,314.10	7,373.21	6,855.67	7,567.24	6,184.94
68	Station Employees	-	-	-	-	-	-	-	-	-	-
69	" Expenses	604.00	612.46	623.20	507.76	640.12	514.12	582.4	520.47	576.91	575.56
70 (a)	Car House Employees	24,053.69	31,936.58	22,522.84	26,007.25	23,193.77	31,209.34	24,126.98	31,378.47	24,[illegible]	31,[illegible]
(b)	Car Cleaners	13,890.01	9,712.12	12,684.37	8,833.07	14,[illegible]	[illegible]	12,971.1	[illegible]	[illegible]	[illegible]
71	Car House Expenses	3,512.09	3,930.11	3,457.01	3,[illegible]	3,756.37	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
72	Operation of Signal & Interlocking Apparatus	308.05	307.47	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
73	Other Transportation Expenses	2,807.55	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
		58,871.45	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	Total Conducting Transportation	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Operating Expenses by Months for First Six Months of Years 1926 and 1927 and Totals for Same Period.

January		February		March		April		May		June		Total 6 mos. to June 30	
1926	1927	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927
359.67	243.00	359.67	243.00	359.66	243.00	244.32	251.33	243.00	251.33	217.00	251.33	1,783.32	1,482.99
72.56	46.37	242.66	156.31	107.60	267.06	71.47	171.87	71.81	118.60	90.68	123.49	642.78	879.70
77.78	34.38	78.35	223.44	52.24	112.45	20.48	126.14	61.73	134.88	487.40	175.85	777.97	807.14
85.30	87.00	121.28	87.00	120.65	87.00	85.30	87.00	90.81	87.00	86.70	87.00	590.04	522.00
59.08	31.95	82.40	22.74	62.32	17.34	147.83	60.01	26.19	95.54	157.87	53.84	535.39	281.42
515.37	764.86	788.64	1,107.74	954.09	849.63	843.05	705.15	671.66	527.27	800.53	647.64	4,573.34	4,598.29
108.87	806.92	342.87	318.90	811.91	673.49	3,838.46	430.22	756.00	388.85	730.56	424.92	7,082.69	3,013.29
945.22	456.28	390.47	731.01	1,317.37	931.60	1,306.17	408.29	2,279.87	262.65	2,677.17	733.77	8,916.27	4,573.60
,223.85	2,470.76	2,406.34	2,890.14	3,781.84	3,177.56	6,980.78	2,270.01	4,191.06	,852.12	5,247.93	2,497.84	34,901.80	16,158.43
964.92	1,525.54	1,001.79	1,570.36	1,008.12	1,710.07	1,028.20	1,421.31	1,096.02	,283.27	1,218.49	1,356.99	6,305.54	8,867.53
72.55	46.55	242.67	156.30	104.14	418.42	71.47	175.11	61.80	118.69	111.15	130.20	663.78	940.67
,026.16	1,592.26	1,827.69	1,447.78	1,962.62	1,608.88	1,898.21	1,841.11	1,547.82	,612.33	1,503.11	1,566.54	10,781.61	9,404.60
,289.88	1,245.33	1,361.99	1,151.60	1,365.26	1,218.17	1,154.41	1,227.40	1,381.40	,238.40	825.70	1,141.23	7,318.54	7,222.13
-	-	-	-	-	-	-	-	-	-	-	-	-	-
76.79	-	-	77.59	-	-	-	-	77.59	83.38	-	-	213.95	160.97
26.90	38.14	84.83	-	32.31	82.26	80.13	17.[illegible]	62.24	32.26	3.67	-	204.78	143.51
,000.88	8,124.94	7,408.18	7,[illegible].82	8,17.[illegible]	8,327.01	7,[illegible]	[illegible]	8,046.92	,872.86	7,988.87	8,007.00	47,495.16	48,378.09
282.59	404.69	179.79	130.38	272.82	206.72	464.06	204.95	490.34	396.37	256.83	200.19	2,037.43	1,731.90
,503.90	,113,859.82	108,543.32	99,369.87	113,240.[illegible]	106,112.37	[illegible]	101,363.[illegible]	97,710.[illegible]	10,611.86	95,[illegible]	95,939.92	644,129.18	618,237.15
,244.57	126,837.27	120,616.26	111,419.09	133,040.11	119,[illegible]	[illegible]	[illegible]	110,143.34	11,[illegible]	105,684.18	108,341.97	719,149.97	695,106.55
,468.42	129,308.03	127,082.60	114,309.23	136,821.95	122,[illegible]	[illegible]	[illegible]	114,[illegible]	110,501.10	110,[illegible]	110,839.81	744,051.77	711,254.98
,054.06	39,082.06	35,684.58	37,361.34	36,885.18	39,372.98	37,901.61	39,[illegible]	40,[illegible]	41,[illegible]	39,039.16	40,777.23	226,831.42	237,444.81
152.07	157.83	46.22	47.93	177.62	918.54	127.61	[illegible]	[illegible]	32.00	436.41	217.98	1,918.89	1,589.78
,176.85	339,[illegible].08	308,101.78	310,285.48	343,[illegible].89	344,077.21	[illegible]	[illegible]	346,386.17	34,[illegible].05	335,462.68	326,120.94	2,003,125.98	1,997,234.81
,774.72	2,825.72	2,586.92	2,612.90	2,[illegible]	[illegible]	[illegible]	2,[illegible]	2,777.32	[illegible]	2,844.40	2,875.78	16,751.80	16,992.62
,158.70	361,970.69	346,381.50	350,307.62	383,[illegible].25	387,[illegible]	[illegible]	[illegible]	390,873.58	38[illegible].96	377,771.85	369,987.91	2,249,527.79	2,253,256.02
598.80	[illegible]	631.20	254.40	[illegible]	[illegible]	778.78	[illegible]	[illegible]	[illegible]	580.37	[illegible]	3,[illegible]	1,821.27
,324.11	[illegible]	4,127.84	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	25,[illegible]	21,784.29
937.15	[illegible]	784.88	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
,779.01	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
-	-	-	-	-	-	-	-	-	-	-	-	-	-
804.00	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	-	-	-	-
053.69	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
890.71	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
512.09	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
308.26	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
907.56	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
874.36	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Operating Expenses by Months for First Six Months of Years 1926 and 1927 and Totals for Same Period.

Account No.	Classification	January 1926	January 1927	February 1926	February 1927	March 1926	March 1927	April 1926	April 1927	1926	1927
	I. Traffic										
79	Supt. and Solicitation - Salaries	320.83	291.25	342.50	291.25	387.50	301.50	387.50	301.50	767.50	384.34
79	" " " - Expenses	120.13	74.84	166.43	102.77	120.27	94.61	121.80	116.23	103.03	84.76
80	Advertising	2,378.49	1,300.88	1,183.49	781.76	883.80	1,387.70	1,788.17	1,158.92	1,404.84	1,093.50
81	Parks, Resorts and Attractions	-	-	-	-	-	-	-	-	-	-
	(a) Gwynn Oak Park - Receipts	-	-	-	-	-	-	-	-	5,840.16	5,635.30
	(b) " " " - Expenses	510.61	402.25	242.06	206.47	777.78	736.02	2,197.72	1,892.67	5,292.81	3,166.44
	(c) Bay Shore Park - Receipts	-	-	-	-	-	-	-	-	3,677.00	1,321.93
	(d) " " " - Expenses	1,680.56	2,142.29	1,430.68	1,127.24	1,889.46	1,276.74	3,161.07	3,753.48	13,680.67	12,401.66
82	Miscellaneous Traffic Expenses	5.10	-	9.55	-	10.85	-	-	-	-	-
	Total Traffic	5,015.72	4,276.51	1,007.93	2,493.49	3,799.46	3,303.37	7,804.26	6,822.00	13,331.89	13,173.47
	II. General and Miscellaneous										
83	(a)Salaries of General Officers	10,026.36	11,131.65	10,435.78	11,141.01	10,148.24	10,884.55	10,854.16	10,879.17	11,136.97	10,805.66
	(b)Expenses of " "	548.76	607.93	940.11	1,388.12	934.47	746.38	883.95	1,848.58	933.89	838.44
84	(a)Salaries of General Office Clerks	18,765.82	18,856.38	18,767.36	18,917.12	18,027.73	18,405.69	17,720.64	18,142.28	18,044.88	18,012.54
	(b)Expenses of " " "	-	-	-	-	-	-	-	-	-	-
85	(a)General Office Rent	4,696.62	4,736.46	4,660.13	4,736.46	4,678.70	4,736.46	4,761.00	4,736.46	4,771.00	4,736.46
	(b)General Office Supplies & Expenses	1,924.31	1,565.67	1,592.22	1,401.16	1,825.69	1,461.80	1,366.01	1,090.41	1,427.69	1,388.97
86	(a)Salaries-General Counsel & Clerks	3,861.04	3,845.99	3,809.83	3,846.99	3,809.84	3,915.01	3,743.92	3,914.99	3,683.66	3,914.99
	(b)Law Expenses	2,513.50	1,840.25	2,414.50	1,957.83	2,371.25	1,846.49	2,300.00	4,262.98	2,174.58	2,531.54
87	Relief Department Expenses	1,619.61	1,578.02	1,625.13	1,587.00	1,572.21	1,546.71	1,561.94	1,[illegible]	1,384.22	1,531.55
88	Pensions and Gratuities	8,865.08	8,277.02	3,854.22	5,810.74	7,166.19	8,674.69	8,880.66	8,[illegible]	10,396.67	8,402.65
89	(a)Telephone Expense	2,703.63	2,700.00	2,700.00	2,700.00	2,700.00	2,700.00	2,700.00	2,700.00	2,700.00	2,700.00
	(b)Advertising (Miscellaneous)	69.19	95.03	10.08	37.75	98.58	560.05	868.97	1,[illegible]	43.80	767.70
	(c)Directors and Executive Committee Fees	290.00	260.00	250.00	280.00	430.00	280.00	460.00	340.00	250.00	370.00
	(d)Employees Club Room Expenses	295.46	404.77	373.41	336.07	302.68	416.37	295.97	254.73	281.08	27.39
	(e)Other Miscellaneous Expenses	4,[illegible]8.62	5,813.05	4,[illegible]1.87	6,027.97	4,391.70	8,998.19	8,[illegible]	9,[illegible]	[illegible]	6,985.39
	(f)Employees Recreation Expenses	97.64	[illegible]3.87	203.69	93.62	205.37	100.32	259.19	289.30	[illegible]	693.98
	(g)Welfare Expense	991.84	1,182.86	991.73	1,417.62	985.68	1,804.71	1,098.50	1,226.59	1,118.52	1,280.25
90	Valuation Expense	2,000.00	2,[illegible]0.00	2,[illegible]0.00	[illegible],000.00	,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00
91	Amortization of Franchises	-	-	-	-	-	-	-	-	-	-
92	(a)Salaries of Claim Agent, Assistant & Clerks	8,827.72	8,350.47	8,977.72	8,[illegible]6.44	8,977.71	8,787.23	8,[illegible]	8,[illegible]	8,789.84	8,892.16
	(b)Liabilities and Damages	38,239.75	38,770.38	38,508.75	41,308.69	37,942.07	37,833.84	38,617.38	35,[illegible]	38,226.70	35,705.80
93	Insurance	2,450.00	2,850.00	2,450.00	2,[illegible]0.00	[illegible],000.00	2,850.00	2,884.82	[illegible]	2,450.00	[illegible],847.82
94	(a)Stationery and Printing	3,720.47	4,237.40	4,856.71	4,[illegible]6.47	4,746.36	4,422.02	4,631.21	4,[illegible]	[illegible]	3,578.24
	(b)Transfer Expense	3,226.07	3,186.12	2,943.12	2,943.80	[illegible],814.02	[illegible],[illegible]6.07	[illegible],[illegible]2.10	[illegible]	[illegible]	7,[illegible]5.30
95	Store Expense	7,805.01	[illegible],041.76	[illegible],[illegible]6.36	[illegible],[illegible]6.07	[illegible],947.86	[illegible],[illegible]3.36	[illegible],[illegible]0.31	[illegible],[illegible]6.07	[illegible],[illegible]9.10	[illegible],[illegible]2.72
96	(a)Garage Expense	3,140.62	[illegible],961.76	[illegible],[illegible]1.[illegible]	[illegible]3.97	[illegible],[illegible]1.[illegible]	[illegible],[illegible]1.00	[illegible],[illegible]0.16	[illegible],[illegible]3.[illegible]	[illegible],[illegible]0.51	[illegible],[illegible]5.28
	(b)Stable Expense	20.37	2.00	22.64	-	16.32	-	21.[illegible]	.00	9.58	-
	Total General & Miscellaneous	[illegible],[illegible]2.72	[illegible],[illegible]3.40	[illegible],[illegible]1.91	[illegible],[illegible]2.71	[illegible],[illegible]2.[illegible]	[illegible],[illegible]0.[illegible]	[illegible],[illegible]6.[illegible]	[illegible],[illegible]9.31	[illegible],[illegible]1.60	[illegible],[illegible]3.73
	III. Transportation for Investment Cr.	459.07	1,073.91	393.56	988.01	1,131.39	1,684.26	1,033.99	1,736.15	947.32	1,800.65
	Total Operating Expenses	[illegible],[illegible]2.82	[illegible],[illegible]0.83	[illegible],[illegible]5.08	[illegible],[illegible]2.[illegible]	[illegible],[illegible]7.[illegible]	[illegible],[illegible]6.[illegible]	[illegible],[illegible]2.[illegible]	[illegible],[illegible]0.41	[illegible],[illegible]3.05	[illegible],[illegible]7.47

People's Counsel Exhibit No. 4

Sheet #6

[illegible] RAILWAY [illegible] ELECTRIC COMPANY OF BALTIMORE

Operating Expenses by Months for First Six Months of Years 1926 and 1927 and Totals for Same Period.

January		February		March		April		May		June		Total 6 mos. to June 30	
1926	1927	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927
320.82	291.25	342.50	291.25	367.50	301.07	367.50	301.50	367.50	384.34	398.16	318.21	2,163.99	1,888.05
120.13	74.84	166.43	102.77	180.27	94.81	121.80	116.23	103.03	84.76	187.65	78.20	819.31	550.61
378.49	1,382.88	1,188.49	781.76	882.50	1,382.70	1,785.17	1,188.92	1,404.84	1,092.60	1,433.30	1,476.28	6,452.61	7,211.04
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	3,840.16	2,638.30	7,977.57	6,966.41	11,817.73	9,600.71
510.61	402.25	242.06	208.47	777.78	336.62	2,197.72	1,892.87	5,292.81	3,100.44	5,127.74	6,463.95	14,148.72	11,870.60
-	-	-	-	-	-	-	-	3,677.00	1,321.93	20,369.19	21,927.19	23,746.19	23,249.12
680.56	2,142.29	1,430.88	1,127.24	1,869.46	1,276.74	3,161.07	3,763.48	13,680.67	12,401.66	22,086.13	29,862.92	43,898.77	50,564.33
5.10	-	9.55	-	10.85	-	-	-	-	-	-	37.49	25.50	37.49
015.72	4,276.51	1,307.93	2,492.49	3,739.46	3,303.37	7,504.26	6,822.00	17,331.89	13,173.47	1,186.22	9,344.45	31,944.98	39,272.29
,026.36	11,131.65	10,435.78	11,141.01	10,148.24	10,564.65	10,654.16	10,873.17	11,136.97	10,805.66	10,860.13	10,827.38	63,261.64	65,669.42
549.76	607.83	940.11	1,388.12	934.47	742.35	552.95	1,248.58	932.69	938.44	916.53	742.49	4,798.71	5,537.81
,765.82	18,856.38	18,787.36	18,917.12	18,027.73	18,305.69	17,720.84	18,142.28	18,044.88	18,012.54	17,932.47	18,134.28	109,155.06	110,438.29
-	-	-	-	-	-	-	-	-	-	-	-	-	-
,696.52	4,736.46	4,660.13	4,736.46	4,678.70	4,736.46	4,781.00	4,736.46	4,771.00	4,736.46	4,719.34	4,788.01	28,276.69	28,470.31
,324.31	1,805.67	1,590.22	1,401.16	1,885.89	1,461.80	1,368.01	1,090.41	1,427.69	1,388.97	1,666.62	1,340.39	9,802.54	8,846.40
,801.04	3,846.33	3,809.83	3,846.39	3,809.84	3,915.01	3,742.92	3,914.99	3,683.66	3,914.99	3,663.67	3,915.01	22,533.96	23,353.98
,519.50	1,840.25	2,414.50	1,957.82	2,331.25	1,846.49	2,300.00	4,262.96	2,174.58	2,531.54	2,288.08	3,272.14	14,027.91	15,711.23
,619.61	1,578.02	1,625.13	1,587.00	1,572.81	1,546.71	1,561.94	1,517.63	1,384.28	1,531.55	1,530.56	1,529.98	9,493.69	9,318.71
,865.08	8,277.02	7,854.22	8,710.74	7,176.19	8,274.69	8,380.66	8,305.69	10,396.57	8,402.65	6,660.70	8,448.75	45,823.42	47,518.94
,703.63	2,700.00	2,700.00	2,700.00	2,700.00	2,700.00	2,700.00	2,700.00	2,700.00	2,700.00	2,700.00	2,700.00	16,203.63	16,200.00
62.19	95.03	10.08	87.75	98.88	560.05	868.97	1,144.51	43.66	787.70	8.55	50.24	792.03	3,041.28
290.00	250.00	290.00	250.00	430.00	290.00	460.00	340.00	250.00	370.00	325.00	350.00	2,005.00	2,350.00
295.46	404.77	277.41	336.07	402.06	416.37	295.37	254.73	281.08	23.39	167.43	1.54	1,716.03	1,436.47
,478.52	8,810.08	8,116.87	8,021.37	8,331.70	8,998.17	8,255.03	9,784.19	8,676.49	,385.39	8,338.93	7,565.43	38,560.84	42,073.61
97.64	3 0.87	207.69	92.62	206.37	100.22	265.13	289.30	781.01	699.96	585.54	164.50	2,033.36	1,651.88
991.84	1,182.16	991.73	1,317.72	985.62	1,284.71	1,038.50	1,236.59	1,116.82	1,280.25	1,163.19	1,230.19	5,392.39	7,452.92
,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	12,000.00	12,000.00
-	-	-	-	-	-	-	-	-	-	-	-	-	-
,827.72	9,350.47	8,977.72	9,116.44	8,977.71	9,387.23	9,370.32	9,160.78	9,729.64	9,698.16	8,725.83	9,625.50	53,219.34	56,994.56
,279.70	35,770.38	35,098.75	31,328.69	37,942.07	31,887.84	36,837.68	38,269.03	38,236.70	35,305.80	35,507.94	33,066.56	217,079.85	207,004.40
,450.00	2,850.00	2,450.00	2,850.00	2,450.00	2,850.00	2,884.82	2,850.00	2,850.00	2,847.84	2,840.00	2,856.40	14,834.82	17,103.68
,730.17	4,237.86	4,856.71	4,235.47	4,740.38	4,125.09	4,531.21	4,705.38	5,103.21	4,578.34	3,736.99	3,421.12	26,348.43	24,671.38
,228.07	3,186.12	2,942.12	2,942.80	3,014.02	2,876.07	3,008.10	3,077.12	3,000.00	3,000.00	3,649.29	3,317.27	19,004.46	18,224.37
,805.01	4,041.76	3,811.36	3,774.07	3,947.80	3,773.30	3,911.11	3,710.27	3,980.10	3,800.73	3,244.74	3,955.69	22,712.18	23,032.06
,140.48	3,951.70	3,[illegible]	[illegible]8.47	3,[illegible]	,[illegible]	,[illegible]	3,[illegible]	[illegible]51	,[illegible]	3,[illegible]	3,[illegible]	18,378.73	20,073.86
50.77	2.00	20.64	-	16.52	-	21.04	.00	9.68	-	2.64	-	93.06	4.00
,[illegible]	127,819.40	110,[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	31,490.00	[illegible]	128,100.[illegible]	[illegible]	759,142.47	768,311.55
489.07	1,073.91	393.56	965.01	1,151.39	1,684.26	1,033.99	1,730.15	947.32	1,800.65	1,420.30	1,841.58	5,385.53	9,101.56
,[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	5,060,924.58	5,009,405.83

UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Operating Revenues, Expenses, Non-Operating Revenues, Deductions from Gross Income and Net Income for the Second Six Months of the Years 1926 and 1925.

Account No.	Classifications	July 1926	July 1925	August 1926	August 1925	September 1926	September 1925	October 1926	October 1925	November 1926	November 1925	December 1926	December 1925	I
	Operating Income													
	Revenue from Transportation													
101	Passenger Revenue	1,310,137.52	1,250,469.09	1,271,236.80	1,231,422.73	1,316,895.78	1,273,648.48	1,419,951.63		1,388,926.98		1,460,771.98		8,16
102	Special Car Revenue	5,429.00	5,258.00	5,544.25	5,241.50	5,468.00	5,488.75	302.00		425.00		111.00		1
104	Mail Revenue	5,920.85	5,632.31	5,836.22	6,004.09	5,830.85	5,628.10	5,221.17		5,677.61		6,020.80		3
105 (a)	Conscience Fund	-	.15	5.00	5.00	20.00	5.00	10.00		1.40		10.00		
(b)	Other Miscellaneous Transp.Revenue	10.00	-	-	-	-	-	-		-		-		
		11,397.85	10,891.46	8,385.47	8,250.69	8,121.85	8,121.60	8,357.71		7,807.51		6,141.30		4
	Total Revenue from Transportation	1,321,535.37	1,261,360.55	1,279,621.27	1,239,676.32	1,324,609.63	1,281,807.06	1,425,922.70		1,394,934.49		1,466,913.28		8,21
	Revenue from Other Ry. Operations													
110 (a)	Car Advertising	8,213.33	8,213.33	8,213.33	8,213.33	8,213.34	8,213.34	8,213.33		8,213.33		8,213.34		4
(b)	Station Privileges	13.21	14.12	35.40	28.72	21.84	26.52	18.73		10.10		14.87		
111	Parcel Room Receipts	-	-	-	-	-	-	-		-		-		
116	Rent of Equipment	-	-	-	-	-	-	-		-		-		
117	Rent of Buildings & Other Property	1,671.42	1,606.09	1,588.33	1,543.33	1,266.93	1,[illegible].3	1,[illegible].16		1,[illegible].31		1,965.76		9
118	Power Sold	1,864.42	1,556.49	1,564.12	1,501.43	1,[illegible].88	1,[illegible].33	[illegible].65		579.36		[illegible].76		2
119	Miscellaneous Revenue	1,346.31	1,551.63	1,869.86	1,682.60	1,480.40	1,[illegible].03	1,716.33		1,519.72		1,[illegible].89		8
	Total Revenue from other Ry. Operations	12,814.99	12,943.66	13,271.04	12,968.01	12,157.09	12,[illegible].78	12,071.60		11,894.86		12,435.91		74
	Total Operating Revenues	1,334,150.36	1,274,304.21	1,292,892.31	1,252,644.33	1,336,766.72	1,294,[illegible].81	1,437,994.30		1,406,729.37		1,479,349.19		8,287
	Operating Expenses													
	Ways & Structures (Details Sheet 10)	71,378.29	76,482.85	60,882.06	64,488.78	66,362.60	68,[illegible].61	77,[illegible].80		68,782.38		69,[illegible].46		797
	Equipment (" " 10)	72,652.25	72,384.67	72,402.96	74,908.13	67,[illegible].68	71,[illegible].42	77,[illegible].92		76,337.92		77,[illegible].11		437
	Power (" " 11)	118,139.81	108,465.06	112,[illegible].97	106,866.25	107,704.80	106,[illegible].86	[illegible].87		117,523.90		[illegible].77		707
	Conducting Transp.(" " 11)	439,907.16	426,898.27	435,602.71	427,848.44	434,419.56	418,[illegible].26	440,[illegible].11		[illegible].02		[illegible].78		2,715
	Traffic (" " 12)	29,956.34	30,976.49	19,882.06	6,472.01	2,[illegible].43	169.24	[illegible].02		6,996.98		5,836.9[illegible]		27
	General & Miscel. (" " 12)	122,210.41	120,779.46	120,486.28	122,689.54	124,[illegible].87	124,[illegible].43	129,[illegible].13		120,142.09		[illegible]		736
	Transp. for Investment Cr. " 12)	1,943.56	1,652.39	1,719.26	1,701.84	1,[illegible].65	1,[illegible].88	1,[illegible].66		982.83		1,478.83		9
	Total Operating Expenses	792,386.02	773,382.15	780,119.06	786,626.70	787,[illegible].04	787,[illegible].79	845,[illegible].04		[illegible].80		[illegible].28		1,685
	Depreciation	66,707.52	63,715.21	64,644.61	62,232.22	66,838.34	64,[illegible].54	71,[illegible].72		70,[illegible].48		[illegible]		414
	Total Operating Expenses (Including Depreciation)	859,093.54	837,097.36	844,763.67	848,858.92	850,[illegible].38	852,[illegible].33	[illegible].76		896,870.28		[illegible]		2,100
	Net Operating Revenue	475,056.82	437,206.85	448,128.64	403,785.41	485,[illegible].34	441,[illegible].48	[illegible].54		510,059.11		[illegible]		6,187

People's Counsel Exhibit No. 41

Sheet #7

UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

...es, Expenses, Non-Operating Revenues, Deductions from Gross Income
...s for the Second Six Months of the Years 1926 and 1927.

1927	August 1926	1927	September 1926	1927	October 1926	1927	November 1926	1927	December 1926	1927	Total 6 mos. to Dec. 31 1926	1927	Total 12 mos. to Dec. 31 1926	1927 Before Closing.	Total 12 mos. to Dec. 31 1926	1927 After Closing
50,469.09	1,271,238.80	1,231,421.73	1,318,896.78	1,273,668.48	1,419,986.53		1,388,926.98		1,460,771.98		8,167,324.59		16,483,922.78		16,483,922.78	
5,258.00	2,544.25	2,541.50	2,763.00	2,484.75	302.00		725.00		111.00		11,441.25		18,339.25		18,339.25	
6,633.31	3,836.22	6,004.09	1,830.85	5,626.10	1,324.17		5,677.51		6,080.30		34,910.90		69,198.88		69,198.88	
.15	5.00	5.00	20.00	5.00	10.00		5.10		10.00		50.00		55.00		55.00	
-	-	-	-	-	-		-		-		10.00		30.00		30.00	
10,891.46	8,385.47	8,280.69	8,018.26	8,121.60	8,334.19		7,637.91		6,141.30		46,412.15		87,623.13		87,623.13	
61,360.55	1,279,621.27	1,239,672.32	1,324,809.63	1,281,807.06	1,425,922.70		1,394,834.49		1,466,913.28		8,213,436.74		16,671,545.91		16,671,545.91	
8,213.33	8,213.33	8,213.33	8,213.34	8,213.34	8,213.33		8,213.33		8,213.34		49,280.00		98,560.00		98,560.00	
14.12	35.40	26.72	41.84	26.52	10.75		19.10		14.27		138.45		214.55		214.55	
-	-	-	-	-	-		-		-		-		-		-	
-	-	-	-	-	-		-		-		-		-		-	
-	-	-	-	-	-		-		-		-		-		-	
1,606.09	1,588.33	1,543.33	1,286.93	1,[illegible].13	1,636.16		1,870.31		1,385.76		9,606.93		19,575.26		19,575.26	
1,556.49	1,564.12	1,501.43	1,178.68	1,101.73	890.89		879.36		846.26		6,220.99		11,640.28		11,640.28	
1,551.63	1,869.86	1,882.60	1,480.40	1,988.03	1,716.85		2,019.78		1,666.89		9,196.14		14,175.07		14,175.07	
12,943.66	13,271.04	12,968.01	12,157.09	12,737.76	12,071.60		11,894.56		12,426.91		74,436.51		144,163.15		144,163.15	
274,304.21	1,292,892.81	1,252,644.33	1,336,766.72	1,294,[illegible].61	1,437,394.80		1,400,729.37		1,473,340.19		8,287,873.25		16,715,709.07		16,715,709.07	
76,482.85	80,882.06	84,488.79	86,368.00	85,428.11	[illegible].80		81,762.38		69,541.46		497,607.89		858,863.90		858,531.72	
72,384.67	72,402.96	74,908.13	82,507.88	72,770.46	77,[illegible].92		76,237.92		77,417.11		427,667.84		908,487.16		917,730.83	
106,465.06	112,373.97	106,866.25	107,704.80	106,188.86	121,[illegible].80		117,523.90		[illegible].77		707,744.85		1,421,796.62		1,451,326.85	
426,838.97	438,802.71	422,848.44	424,879.55	418,[illegible].96	448,[illegible].13		431,[illegible].83		[illegible].99		2,611,711.81		5,214,422.37		5,215,057.78	
30,976.49	19,882.66	6,472.61	2,644.43	169.24	5,[illegible].13		6,836.29		[illegible].11		27,607.83		4,[illegible].43		4,164.33	
120,779.40	120,466.28	122,669.54	124,843.87	282,[illegible].49	129,[illegible].13		130,141.89		[illegible].11		[illegible].66		1,527,296.13		1,528,782.22	
1,652.39	1,719.26	1,701.84	1,592.65	1,215.95	1,467.88		982.82		1,478.83		9,164.78		14,570.31		14,570.31	
773,382.15	780,119.06	786,626.70	787,990.04	969,[illegible].79	842,489.04		[illegible].80		800,489.88		4,985,909.24		9,946,833.82		9,965,019.52	
63,715.21	64,644.61	68,822.68	66,838.34	64,[illegible].84	71,[illegible].76		70,[illegible].48		[illegible].11		[illegible].86		835,783.45		835,783.45	
837,097.36	844,763.67	849,448.92	850,828.38	[illegible].01	[illegible].78		896,870.28		[illegible].88		[illegible].90		10,782,613.27		10,790,804.97	
437,206.85	448,128.64	403,196.41	486,938.34	448,[illegible].71	[illegible].14		510,[illegible].11		[illegible].31		[illegible].45		5,933,089.80		5,924,904.10	

UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Operating Revenues, Expenses, Non-Operating Revenues, Deductions from Gross Income and Net Income for the Second Six Months of the Years 1926 and 1927

Account No.	Classifications	July 1926	July 1927	August 1926	August 1927	September 1926	September 1927	October 1926	October 1927	November 1926	November 1927	December 1926	December 1927	
	Net Operating Revenue brought forward	47,064.82	476,064.82	448,164.64	403,385.41	485,938.34	440,861.79	503,605.84		510,019.11		544,783.90		2,987,
215	Taxes Assignable to Railway Operations.													
	(a) Park Tax	96,879.25	81,344.41	84,402.50	80,920.00	88,804.06	84,107.10	96,478.45		93,066.37		96,771.77		549,
	(b) License	744.54	900.28	711.00	903.18	758.32	886.70	613.16		684.70		521.79		4,
	(c) Taxes [State, City & County]	32,500.00	32,500.00	32,500.00	14,047.00	32,500.00	38,500.00	32,500.00		32,500.00		32,500.00		195,
	(d) " [B.S.P. & S. Ry. Co. Bonds]	78.38	133.26	235.64	66.69	500.50	212.75	20.15		3.88		104.05		
	(e) Rental of Subway	7,300.00	7,100.00	7,300.00	7,100.00	7,300.00	7,000.00	7,000.00		7,000.00		7,750.00		43,
	(f) Federal Corporation Tax	5,000.00	5,000.00	5,000.00	-	5,000.00	-	15,000.00		10,000.00		10,000.00		50,
	(g) " Capital Stock Tax	-	-	-	-	-	-	-		-		-		
		132,500.94	126,977.59	130,149.60	103,036.87	134,872.88	130,706.55	151,616.76		144,854.55		149,647.61		843,
	Operating Income	342,853.88	310,229.26	317,979.04	295,348.49	331,065.46	311,800.50	371,988.78		365,804.46		395,136.29		2,144,
II.	Non-Operating Income													
203	Income from Lease of Road	1,052.62	465.70	1,052.62	465.70	1,052.62	465.70	1,052.62		1,052.62		1,052.63		6,
204	Miscellaneous Rent Income	-	-	-	-	-	-	-		-		-		
206	Dividend Income	1,978.16	1,978.16	1,978.17	1,978.17	1,978.17	1,978.17	1,978.16		1,978.17		1,978.17		11,
207	Income from Funded Securities	2,296.66	3,279.79	2,296.67	3,279.79	2,296.67	3,279.80	2,803.12		2,803.12		2,803.14		15,
208	" from Unfunded Securities & Accts.	-	-	-	-	-	-	-		-		-		
	(a) Interest on Bank Deposits	296.57	4,266.74	343.50	435.45	914.71	1,036.83	419.69		430.16		1,226.81		3,
	(b) Interest and Discount	491.29	648.81	677.79	368.87	474.53	574.78	800.96		461.46		284.79		3,
209	Interest on Sinking Fund & Other Reserves	1,833.33	2,010.00	1,793.33	2,010.00	1,831.42	2,032.64	1,973.33		1,973.55		2,228.21		11,
211	Contributions from Others	-	-	-	-	-	-	-		-		-		
212	Miscellaneous Income	-	2,096.87	16,775.00	2,096.88	2,097.74	2,271.24	2,096.88		2,096.87		2,096.88		23,
	Total Non-Operating Income	7,948.63	14,746.11	24,917.08	10,634.86	10,645.86	11,639.16	11,124.76		10,795.95		11,976.62		77,
	Gross Income	350,802.51	324,975.37	342,896.12	305,983.35	341,711.32	323,399.66	383,113.54		376,600.41		407,111.91		2,221,
III.	Deductions from Gross Income													
216	Rent of Leased Roads													
	(a) Interest On B.S. & P.& C.Ry. Co.'s Bonds	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00		7,500.00		7,500.00		45,0
	(b) Int. on Wil.Elec.Rys.Co.'s Bonds-1st Mtge.	14,932.54	14,215.67	14,932.33	14,215.67	14,932.33	14,208.38	14,574.00		14,574.00		14,561.62		88,5
	(c) " " " " " " -Series A- 6½%	21,219.79	21,003.12	21,219.79	21,003.13	21,219.80	21,003.12	21,219.79		21,219.79		21,219.79		127,3
	(d) " " " " " " -Series B- 6½%	2,296.66	3,279.79	2,296.67	3,279.79	2,296.67	3,279.80	2,803.12		2,803.12		2,803.14		16,8
		45,948.79	45,998.58	45,948.79	45,998.59	45,948.80	45,991.30	46,096.91		46,096.91		46,084.55		276,1
217	Miscellaneous Rents													
	(a) Ground Rents	665.87	930.27	37.50	303.05	-	265.55	384.38		130.00		-		1,8
	(b) Right of Way	25.00	25.00	45.00	45.00	122.46	116.33	68.75		29.60		98.80		
	(c) Int. on Bath. Steel Co.'s Const.Sp.Pt.	260.39	352.19	260.39	357.08	260.39	356.86	260.39		352.19		352.18		1,7
		941.26	1,307.46	342.89	705.13	382.85	738.74	713.52		511.79		450.98		5,2
	Deductions from Gross Income Forwarded	46,890.05	47,306.04	46,291.68	46,703.72	46,331.65	46,734.84	46,810.43		46,608.70		46,535.24		279,

People's Counsel Exhibit No. 4

Sheet #8

[illegible] RAILWAY AND [illegible] COMPANY

Items, Expenses, Non-Operating Revenues, Deductions from Gross Income and Income for the Second Six Months of the Years 1926 and 1927

1926	August 1926	August 1927	September 1926	September 1927	October 1926	October 1927	November 1926	November 1927	December 1926	December 1927	Total 6 mos. to Dec. 31 1926	Total 6 mos. to Dec. 31 1927	Total 12 mos. to Dec. 31 1926	Total 12 mos. to Dec. 31 1927
													Before Closing	After Closing
75,054.82	448,184.84	403,384.41	491,958.91	111,[illegible].78	527,001.84		510,089.11		544,783.90		2,987,570.35		5,937,089.80	5,984,904.10
41,344.08	84,402.30	80,920.00	88,804.06	[illegible],107.10	98,478.45		94,066.37		98,771.77		549,398.20		1,116,118.44	1,116,118.44
900.28	711.66	903.18	708.42	886.02	615.16		684.70		521.79		4,046.97		8,501.03	8,536.63
32,500.00	32,500.00	19,047.00	32,500.00	32,500.00	32,500.00		32,500.00		32,500.00		195,000.00		388,500.00	385,546.91
133.26	234.64	66.68	500.50	216.88	26.15		2.58		104.05		948.27		3,786.60	3,786.60
7,100.00	7,300.00	7,100.00	7,300.00	7,000.00	7,000.00		7,000.00		7,750.00		43,650.00		87,950.00	85,786.64
5,000.00	5,000.00	-	5,000.00	-	10,000.00		10,000.00		10,000.00		50,000.00		72,000.00	61,000.00
-	-	-	-	-	-		-		-		-		11,541.00	11,541.00
25,377.59	130,143.60	108,036.92	134,892.88	130,788.28	151,616.76		144,254.65		149,647.81		845,042.44		1,688,397.07	1,678,316.88
10,229.26	317,979.04	295,348.49	331,065.46	311,800.80	371,386.78		365,804.46		395,136.29		2,144,527.91		4,244,692.73	4,258,587.89
465.70	1,052.62	465.70	1,052.62	465.70	1,052.62		1,052.62		1,052.63		6,315.72		12,631.44	12,631.44
-	-	-	-	-	-		-		-		-		-	774.70
1,978.16	1,978.17	1,978.17	1,978.17	1,978.17	1,978.16		1,978.17		1,978.17		11,869.00		23,738.00	34,388.00
3,279.79	2,296.67	3,279.79	2,296.67	3,279.80	2,803.12		2,803.12		2,803.14		16,239.38		27,616.88	30,616.88
-	-	-	-	-	-		-		-		-		-	-
4,266.74	343.50	435.45	914.71	1,026.83	419.89		420.16		1,226.81		3,621.44		6,602.89	6,602.89
648.85	577.79	368.87	474.63	874.78	800.96		461.46		289.79		3,495.82		6,925.44	6,925.44
2,010.00	1,793.33	2,010.00	1,831.42	2,010.64	1,973.33		1,973.33		2,228.21		11,833.17		22,466.09	22,466.09
-	-	-	-	-	-		-		-		-		-	-
2,096.87	16,775.00	2,096.88	2,097.74	2,271.24	2,096.88		2,096.87		2,096.88		25,133.37		25,163.37	25,163.37
14,746.11	24,917.08	10,634.86	10,645.86	11,406.16	11,124.76		10,735.35		11,975.62		77,407.90		125,144.11	130,246.31
24,973.57	342,896.12	305,983.35	341,711.32	323,299.06	383,113.54		376,600.41		407,111.91		2,221,935.81		4,369,836.84	4,388,834.20
7,500.00	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00		7,500.00		7,500.00		45,000.00		90,000.00	90,000.00
14,215.67	14,932.33	14,215.67	14,932.33	14,208.38	14,574.00		14,574.00		14,561.62		88,506.62		179,138.12	179,138.12
21,003.12	21,219.79	21,003.13	21,219.80	21,[illegible].12	21,219.79		21,219.79		21,219.79		127,318.76		254,637.50	254,637.50
3,279.79	2,296.67	3,279.79	2,296.67	3,279.80	2,803.12		2,803.12		2,803.14		16,239.38		27,616.88	27,616.88
45,998.58	45,948.79	45,998.59	45,948.80	45,991.30	46,096.91		46,096.91		46,084.55		276,184.75		551,392.50	551,392.50
930.27	37.50	303.05	-	265.28	384.38		130.00		-		1,207.75		2,415.50	2,415.50
25.00	45.00	45.00	122.46	118.33	58.75		29.50		98.50		389.31		971.67	971.67
352.19	260.39	367.08	260.39	358.86	260.39		352.19		352.19		1,745.24		3,306.88	3,306.88
1,307.46	342.89	705.13	382.85	742.47	713.52		511.79		480.69		3,341.30		6,693.45	6,693.45
47,306.04	46,291.68	46,703.72	46,331.65	46,734.64	46,810.42		46,608.70		46,535.24		279,467.75		558,087.95	558,087.95

UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Operating Revenues, Expenses, Non-Operating Revenues, Deductions from Gross Income and Net Income for the Second Six Months of the Years 1926 and 1927.

Classification	July 1926	July 1927	August 1926	August 1927	September 1926	September 1927	October 1926	October 1927	November 1926	November 1927	December 1926	December 1927	6 m 1926
...tions from Gross Income Brought Forward	46,890.05	47,306.04	46,291.68	46,703.72	46,331.65	46,734.64	46,810.43		46,608.70		46,[illegible].24		279,467.
Interest on Funded Debt													
Interest (Coupon)	145,765.00	145,765.00	145,765.00	145,765.00	145,765.00	145,765.00	145,765.00		145,765.00		145,765.00		874,590.
" on Funding Bonds	16,333.33	16,333.33	16,333.33	16,333.33	16,333.34	16,333.34	16,333.34		16,333.33		16,333.33		98,000.
" on Income Bonds	46,666.67	46,666.67	46,666.67	46,666.67	46,666.66	46,666.66	46,666.67		46,666.67		46,666.66		280,000.
" on 5 yr. 6% Gold Notes (1927)	12,500.00	6,354.33	12,500.00	-	12,500.00	-	12,500.00		12,500.00		12,500.00		75,000.
" on 3 yr. 6% Gold Notes (1930)	-	12,500.00	-	12,500.00	-	12,500.00	-		-		-		-
	221,265.00	227,619.33	221,265.00	221,265.00	221,265.00	221,265.00	221,265.01		221,265.00		221,264.99		1,327,590.
Interest on Unfunded Debt	5,023.79	5,053.58	5,512.07	7,571.38	7,120.88	9,162.17	6,563.37		5,351.46		5,237.55		34,809.
Amortization of Disc. on Funded Debt	4,924.52	6,256.53	4,924.52	5,143.86	4,924.52	5,143.87	4,924.52		4,924.52		4,924.52		29,547.
Income Transferred to Other Companies	-	-	-	-	-	-	-		-		-		-
Miscellaneous Debts	-	-	-	-	-	-	-		-		-		-
Commission for paying Coupon Interest	300.00	207.75	1,939.60	2,127.10	680.08	680.08	137.50		1,054.38		318.30		4,429.
Federal Tax (Bond Interest)	1,437.00	1,411.74	1,584.63	1,573.27	1,350.75	972.31	8,527.63		1,570.66		1,717.07		16,188.
U. C. & C. Taxes on Income Bonds	750.00	750.00	750.00	750.00	750.00	750.00	750.00		750.00		1,034.15		4,784.
	12,435.31	13,679.60	14,710.82	17,165.61	14,826.23	16,708.43	20,903.02		13,651.02		13,232.79		89,769.
Total Deductions from Gross Income	280,590.36	288,604.97	282,267.50	285,134.33	282,422.88	284,708.07	288,978.46		281,524.72		281,033.02		1,696,816.
Net Income transferred to Profit & Loss	69,912.15	36,370.40	60,628.62	20,849.02	79,288.44	38,691.59	94,135.08		95,075.69		126,078.89		525,118.

People's Counsel Exhibit No. 41

Sheet #9

UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Revenues, Expenses, Non-Operating Revenues, Deductions from Gross Income
et Income for the Second Six Months of the Years 1926 and 1927.

	August		September		October		November		December		Total 6 mos. to Dec. 31		Total 12 mos. to Dec. 31		Total 12 mos. to Dec. 31	
1927	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927
													Before Closing		After Closing	
47,306.04	46,291.68	46,703.72	46,331.65	46,734.64	46,810.43		46,608.70		[illegible]		279,467.7[illegible]		558,087.95		558,087.95	
145,765.00	145,765.00	145,765.00	145,765.00	145,765.00	145,765.00		145,765.00		145,765.00		874,590.00		1,749,180.00		1,748,780.00	
16,333.33	16,333.33	16,333.33	16,333.34	16,333.34	16,333.34		16,333.33		16,333.33		98,000.00		196,000.00		194,635.00	
46,666.67	46,666.67	46,666.67	46,666.66	46,666.66	46,666.67		46,666.67		46,666.66		280,000.00		560,000.00		559,080.00	
6,354.33	12,500.00	-	12,500.00	-	12,500.00		12,500.00		12,500.00		75,000.00		150,000.00		150,000.00	
12,500.00	-	12,500.00	-	12,500.00	-		-		-		-		-		-	
227,619.33	221,265.00	221,265.00	221,265.00	221,265.00	221,265.01		221,265.00		221,264.99		1,327,290.00		2,65[illegible],180.00		2,652,495.00	
5,053.58	5,512.07	7,571.38	7,120.88	9,162.17	6,563.37		5,351.46		5,237.85		34,809.42		64,544.07		64,544.07	
6,256.53	4,924.52	5,143.86	4,924.52	5,143.87	4,924.52		4,924.52		4,924.52		29,547.12		59,094.24		58,994.39	
-	-	-	-	-	-		-		-		-		-		-	
-	-	-	-	-	-		-		-		-		-		-	
207.75	1,939.60	2,127.10	680.08	680.08	137.50		1,0[illegible].38		318.30		4,42[illegible]		8,859.72		8,859.72	
1,411.74	1,584.63	1,573.27	1,350.75	972.31	8,527.63		1,570.66		1,757.[illegible]		[illegible],188.64		29,837.00		29,837.00	
750.00	750.00	750.00	750.00	750.00	750.00		750.00		1,034.15		4,784.15		9,284.15		9,284.15	
13,679.60	14,710.82	17,165.61	14,826.23	16,708.43	20,903.02		13,651.02		13,232.79		89,789.19		171,619.18		171,519.33	
288,604.87	282,267.50	285,134.33	282,422.88	284,708.07	288,978.46		281,524.72		281,033.02		1,696,81[illegible]		3,384,887.13		3,382,102.28	
36,370.40	60,628.62	20,849.02	79,288.44	38,691.59	94,135.08		95,075.69		12[illegible]		52[illegible]		984,949.71		1,010,054.41	

UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

OPERATING EXPENSES BY MONTHS FOR SECOND SIX MONTHS OF YEARS 1926 and 1927,
TOTAL FOR SAME PERIOD, TOTALS FOR TWELVE MONTHS BEFORE CLOSING DATES AND
TOTALS FOR TWELVE MONTHS AFTER CLOSING DATES.

Acct. No.	Classification.	July		August		September		October		November		December	
		1926	1927	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927
I.	Operating Expenses												
	Way and Structures												
	Maintenance of Way												
1.	Superintendence of Way - Salaries	3,390.13	2,862.31	3,318.85	4,918.04	3,447.00	[illegible]	[illegible]		4,888.42		3,310.00	
2.	" " " - Expenses	127.46	170.68	110.13	22.95	33.39	[illegible]	19.27		147.45		149.51	
4 - 11.	Track and Roadway - Labor	26,189.46	28,408.10	24,698.36	26,[illegible]9.90	22,464.21	[illegible]	28,819.88		27,778.54		28,398.46	
12 - 19.	" " " - Material	10,218.71	10,348.10	10,866.85	12,[illegible]2.03	14,833.87	[illegible]	12,173.44		14,[illegible]0.36		12,[illegible]6.53	
20.	Salt, Snow and Ice	-	-	-	-	-	-	[illegible]9.71		172.23		4,421.86	
21.	Bridges, Trestles and Culverts	5,970.35	4,389.85	4,654.70		4,834.97	[illegible]	4,077.67		5,999.85		3,615.24	
		85,893.01	55,849.04	45,643.99	46,356.26	41,033.44	[illegible]	49,679.92		49,751.26		51,831.00	
	Maintenance of Power Distribution												
1.	Supt. of Power Dist. - Salaries	1,857.46	1,742.95	1,623.32	1,733.54	1,825.86	[illegible]	1,897.85		1,856.68		1,617.85	
2.	" " " - Expenses	-	-	-	-	-	-	-		-		-	
23.	Poles and Fixtures	929.74	1,378.19	943.38	416.49	560.53	[illegible]	[illegible]		294.10		92.67	
24.	Underground Conduits	141.54	-	5.54	19.48	91.52	[illegible]	30.54		72.39		14.70	
25.	Distribution System - Labor	4,821.71	5,346.99	3,773.50	5,045.04	4,216.16	[illegible]	3,896.16		3,294.43		4,[illegible]2	
26.	" " - Material	38.24	2,105.02	1,503.55	1,[illegible]4.09	[illegible]83.17	[illegible]	1,[illegible]6.61		1,[illegible]7.60		1,187.75	
27.	Miscell. Elec. Line Exp.	816.72	1,821.08	1,[illegible]8.49	1,115.56	[illegible]19.32	[illegible]	1,[illegible]0.78		1,[illegible]0.92		1,630.54	
		8,711.41	11,774.23	9,871.43	10,323.40	8,896.56	[illegible]	8,930.71		8,256.12		9,719.43	
14.	Buildings, Fixtures and Grounds	8,778.87	8,859.58	8,286.64	8,109.13	8,432.63	[illegible]	8,079.17		7,756.00		7,[illegible]1	
		71,378.29	76,482.85	60,802.06	64,488.79	62,362.60	[illegible]	67,679.80		65,763.38		69,541.46	
28.	Equalization - Ways and Structures	-	-	-	-	-	-	-		-		-	
	Total Ways and Structures	71,378.29	76,482.85	60,802.06	64,488.79	62,362.60	[illegible]	67,679.80		65,763.38		69,541.46	
II.	Equipment												
	Rolling Stock												
29.	Supt. of Rolling Stock & Shops - Salaries	2,212.83	3,060.00	2,488.32	2,943.70	[illegible]66.04	[illegible]	2,751.08		3,037.70		2,712.66	
29.	" " " " " - Expenses	30.83	148.35	217.11	178.48	1[illegible].20	[illegible]7	102.41		538.32		23,121.78	
30 & 31.	Car Body and Trucks, - Labor	21,204.27	23,926.13	21,155.54	24,776.98	19,[illegible]07	[illegible]	22,068.02		[illegible]37.20		11,441.91	
32 - 41.	" " " " - Material	11,275.58	12,544.26	11,199.54	10,439.24	9,100.32	[illegible]	13,109.74		12,287.66		5,446.23	
30 - 32.	Car Painting - Labor	5,743.26	5,896.57	5,887.28	6,725.16	5,013.27	[illegible]	5,657.54		5,373.14		1,593.[illegible]	
30 - 32.	" " - Material	1,999.80	1,931.70	1,[illegible]0.00	2,[illegible]0. 6	1,481.46	[illegible]	1,967.74		1,[illegible].50		10,177.96	
33.	Electrical Equipment - Labor	9,206.56	9,112.32	10,[illegible]6.47	9,[illegible].67	9,186.68	[illegible]	9,780.72		9,[illegible].89		9,[illegible].44	
42.	" " - Material	7,675.62	3,[illegible].85	5,[illegible]4.85	4,047.[illegible]	3,[illegible]0.80	[illegible]	5,[illegible].03		5,[illegible].82			
		59,444.54	60,000.18	58,807.68	61,349.31	50,[illegible].93	[illegible]	64,143.29		63,349.03		62,316.78	
	Miscellaneous												
34.	Shop Machinery and Tools - Labor	262.12	143.35	256.89	159.85	245.27	[illegible]	418.47		285.58		526.15	
34.	" " " " - Material	287.93	77.33	91.25	68.76	5.12	[illegible]	128.48		204.51		238.93	
37.	Shop Expense - Labor	6,781.67	7,341.28	6,365.31	7,921.64	6,442.46	[illegible]	7,461.14		6,972.28		7,643.08	
37.	" " - Material	1,464.19	1,916.60	1,[illegible]9.02	1,423.83	1,[illegible].12	[illegible]	2,280.24		2,[illegible]0.37		1,986.5[illegible]	
38 (a)	Horses and Harness	-	-	-	-	-	-	-		-		-	
(b)	Vehicles	4,365.75	3,847.74	4,[illegible]5.55	4,364.09	4,[illegible]2.63	[illegible]	2,[illegible].36		2,589.97		3,645.31	
39.	Other Miscellaneous Equip. Exps.	26.05	18.19	58.22	8.75	49.28	[illegible]	14.74		[illegible].94		53.44	
		13,207.71	13,344.49	13,[illegible]4.28	13,858.82	12,[illegible]4.85	[illegible]	12,[illegible].83		11,[illegible].89		14,[illegible].33	
44.	Equalization Equipment	-										-	
	Total Equipment	72,652.25	73,344.67	72,40[illegible].96	76,[illegible]8.13	62,[illegible]7.68	[illegible]	77,[illegible].12		75,[illegible].92		76,417.11	

People's Counsel's Exhibit No. 41

Sheet #10

UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

EXHIBIT BY MONTHS FOR SECOND SIX MONTHS OF YEARS 1926 and 1927,
OR SAME PERIOD, TOTALS FOR TWELVE MONTHS BEFORE CLOSING DATE AND
TOTALS FOR TWELVE MONTHS AFTER CLOSING DATE.

August		September		October		November		December		Total 6 Mos. Dec. 31		Total 12 Mos. Dec. 31		Total 12 Mos. Dec. 31	
27	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927
													before Closing		After Closing.	
862.31	3,318.95	2,913.34	3,447.00	3,781.7	3,682.15		4,226.47		3,310.00		41,376.76		44,528.51		44,528.51	
170.68	110.13	22.95	33.39	26.2	19.07		147.45		147.51		566.81		1,326.32		1,326.32	
408.10	24,692.36	26,116.80	22,484.21	20,37	26,119.88		27,778.64		28,096.46		157,454.21		327,973.53		327,978.53	
048.10	10,866.85	12,70.03	14,533.87	11,00	15,173.44		14,446.36		12,026.53		83,772.76		169,519.96		168,600.98	
-	-	-	-	-	206.71		172.33		4,421.26		4,800.30		29,337.54		29,337.54	
389.85	4,654.70		4,534.97	4,2	4,077.67		2,999.85		3,615.24		25,852.78		55,937.32		55,932.56	
849.04	43,643.99	46,356.26	45,033.44	40,7	49,279.92		49,751.26		51,831.00		293,832.62		628,623.18		628,718.80	
,722.95	1,623.32	1,725.54	1,825.86	1,82	1,897.85		1,886.68		1,817.85		10,887.02		20,501.35		20,501.35	
-	-	-	-	-	-		-		-		-		-		-	
,378.19	943.03	416.49	560.53	51	580.76		294.10		921.67		4,240.83		12,175.85		12,202.48	
-	8.54	19.48	91.52	12	38.54		72.39		14.70		364.23		1,326.76		1,326.76	
,346.99	7,773.50	5,045.34	4,216.16	6,08	3,896.16		3,294.43		4,143.32		24,151.98		62,442.22		62,442.22	
,105.02	1,202.55	1,49	1,083.17	1,3	1,756.01		1,222.60		1,187.75		6,089.92		23,861.10		23,787.37	
,221.06	1,202.49	1,115.56	1,119.32	1,0	1,480.79		1,500.92		1,630.54		7,641.78		19,691.56		16,270.26	
,774.23	9,871.43	10,023.40	8,896.56	10,86	8,320.71		8,256.12		9,719.43		57,375.86		139,568.30		136,540.40	
,859.58	8,306.64	8,109.13	8,432.60	2,76	9,079.17		7,756.00		7,921.63		50,303.31		90,776.52		90,870.52	
,482.85	60,882.06	64,488.79	62,362.80	68,42	67,479.80		65,763.38		69,541.46		387,607.59		858,863.90		852,531.72	
-	-	-	-	-	-		-		-		-		-		-	
,482.85	60,882.06	64,488.79	62,362.80	68,426.21	67,479.80		65,763.38		69,541.46		387,607.59		858,863.90		852,531.72	
									2,717.66		15,977.31		33,802.39		33,802.39	
,060.00	2,486.02	2,943.70	2,769.02	2,91	2,751.08		3,037.70		105.95		1,182.62		1,630.18		1,630.18	
148.35	217.11	176.48	148.20	11	162.41		538.32		25,191.75		131,192.95		269,279.58		271,753.69	
,926.13	21,155.54	24,776.98	19,392.07	27,92	22,052.02		22,037.30		11,441.91		68,594.76		147,828.66		153,250.57	
,242.26	11,179.54	10,139.54	9,160.33	11,28	13,109.74		12,287.66		5,448.23		33,120.70		70,006.21		70,006.21	
,896.57	5,887.26	6,758.16	5,013.27	6,77	5,657.54		5,373.14		1,590.88		10,943.27		24,288.65		24,189.65	
,931.70	1,772.00	2,800.	1,481.46	2,01	1,967.54		1,939.50		10,177.96		56,641.78		120,847.90		123,122.90	
,112.32	10,238.17	9,6	9,188.68	9,34	9,780.73		9,682.59		5,682.44		39,466.76		82,212.32		77,919.64	
,682.85	8,684.85	4,047.92	3,490.80	8,7	8,682.23		8,252.82									
,000.18	58,807.68	61,349.31	50,642.83	60,7	64,163.29		63,349.03		62,316.78		386,754.15		748,706.34		755,754.33	
163.38	256.89	159.85	245.27	30	418.47		285.68		526.15		1,394.56		4,209.53		4,209.53	
77.33	91.25	68.76	5.12		128.48		204.51		238.03		983.12		2,847.41		2,812.60	
,341.28	6,385.36	7,922.64	6,442.46	6,1	7,461.14		6,972.12		7,643.08		41,486.12		82,250.39		82,250.39	
,916.60	1,819.02	1,423.83	1,682.12	1,7	2,250.24		2,100.37		1,996.5		11,511.46		25,922.82		26,167.74	
-	-	-	-	-	-		-		-		-		-		-	
,847.74	4,985.55	4,364.09	4,240.60	4,0	2,720.06		2,389.97		3,648.31		22,376.24		41,828.08		46,332.28	
18.19	58.22	8.75	49.28		14.74		35.94		53.44		257.17		1,942.69		303.96	
,384.49	13,596.28	13,858.82	12,864.85	12,0	12,001.63		11,988.89		14,100.33		78,759.59		158,981.12		161,976.50	
									-		-		-		-	
,384.07	72,400.34	74,938.13	62,507.68	72,7	77,164.92		75,337.92		76,417.11		437,463.84		936,687.16		917,730.83	

Classification										
									1926	1927
Power										
Operating										
Supt. - Salaries	828.00	1,1.84	14.00	11.32	10.00	1.33	32.00		843.00	1.
" - Expense	18.90	10.81	11.08	6.24	1.20	10.00	9.00		11.81	
Power Plant Buildings, Fixtures and Grounds	63.95	171.07	187.64	84.54	84.00	86.71	66.52	516.18	104.94	
" " Equipment - Labor	104.25	87.00	88.19	94.42	100.63	87.38	8.00	110.00	8.30	
" " " - Material	7.76	14.93	68.82	80.22	2.04	10.00	50.22	10.00	29.00	
Sub-station Equipment - Labor	917.06	47.17	692.62	419.62	62.00	47.11	252.22	74.46	610.43	4.
" " " - Material	296.31	328.34	102.70	149.73	41.21	16.11	1,112.31	216.72	118.14	2.
Transmission System	1,28.25	830.92	29.04	1,17.21	1,7.20	702.04	31.21	1,254.63	629.62	4.
	3,72.04	1,770.14	1,797.80	2,281.07	2,17.23	1,981.06	2,169.62	2,726.14	1,941.07	14.
Service										
Supt. - Salaries	1,216.01	1,486.04	1,244.16	1,419.46	1,212.21	1,420.62	1,254.44	1,471.46	2,064.77	8.
" - Expenses	69.47	80.60	87.46	47.86	31.00	122.00	71.02	60.04	244.97	
Power Plant Employees	1,417.84	1,568.23	1,587.29	1,578.74	1,600.67	1,1.1.21	1,227.2	1,18.28	1,[illegible]	9.
Fuel for Power	1,588.69	1,283.40	1,103.56	1,116.37	1,[illegible]	1,[illegible]	1,[illegible]	1,193.04	1,[illegible]	7.
Water for Power	-	-	-	-	-	-	-	-	-	
Labor-Light for Power	5.83	61.77	9.16	-	7.40	-	41.21	-	80.14	
Power Plant Supplies and Expenses	-	45.65	39.45	30.81	27.21	18.00	2.7	60.11	12.72	
Sub-station Employees	3,323.70	3,274.37	8,304.10	8,432.60	8,379.45	7,987.00	8,0[illegible]	7,933.27	4,[illegible]	42.
" " Supplies and Expenses	370.96	403.43	388.28	179.81	279.64	319.91	228.44	876.10	221.05	1.
Power Purchased	106,801.11	93,716.45	97,897.00	93,489.43	92,[illegible]	90,[illegible]	106,147.7	90,[illegible]	[illegible]	610.
	115,800.47	106,994.94	110,670.17	106,[illegible]	105,[illegible]	102,[illegible]	119,[illegible]	111,[illegible]	128,[illegible]	683.
Total Power	119,173.81	108,465.08	112,373.97	108,[illegible]	107,[illegible]	104,[illegible]	121,[illegible]	114,[illegible]	130,[illegible]	707.
Operating Transportation										
Car Service										
Superintendence - Salaries	39,141.10	41,601.83	38,385.32	41,330.12	39,[illegible]	40,[illegible]	38,[illegible]	[illegible]	[illegible]	224.
" " - Expenses	149.13	87.00	198.81	80.29	[illegible]	91.21	196.84	57.30	54.[illegible]	
Passenger, Conductor & Motorman	340,819.99	324,770.69	335,970.43	320,880.09	321,144.87	311,358.41	331,741.54	[illegible]	[illegible]	[illegible]
Mail Service, Conductor & Motorman	2,877.18	2,803.53	2,803.72	2,383.90	[illegible]	2,809.00	2,801.32	[illegible]	[illegible]	[illegible]
	382,987.38	368,763.05	377,858.08	364,231.40	367,[illegible]	355,[illegible]	373,[illegible]	[illegible]	379,[illegible]	2,289.
Miscellaneous Transportation										
Miscellaneous Car Service Employees	206.63	263.31	355.14	400.28	613.0[illegible]	366.08	869.32	[illegible]	[illegible]	2.
" " " Expenses	3,250.33	3,591.26	3,430.46	3,258.43	4,018.15	3,364.65	8,614.17	[illegible]	[illegible]	20.
(b) Car Cleaning Supplies	501.26	1,248.98	968.43	1,046.32	1,060.[illegible]	1,[illegible]	586.14	[illegible]	[illegible]	4.
(c) Locomotive Service and Inspection	7,225.03	6,817.52	7,677.20	6,873.19	7,092.05	6,[illegible]	7,691.96	[illegible]	[illegible]	[illegible]
Station Employees	-	-	-	-	-	-	-	-	-	
Station Expenses	596.27	683.40	600.18	542.53	580.87	607.28	882.00	568.87	[illegible]	3.
(a) Car House Employees	30,213.58	31,350.35	30,480.68	32,607.65	22,879.91	31,[illegible]	[illegible]	28,062.69	[illegible]	160.
(b) Car Cleaners	9,054.49	9,077.79	9,074.05	9,111.15	8,879.91	8,[illegible]	9,[illegible]	[illegible]	[illegible]	54.
Car House Expenses	1,980.29	1,823.24	2,048.81	1,927.37	2,[illegible]	1,[illegible]	2,[illegible]	[illegible]	[illegible]	10.
Operation of Signal & Interlocking Apparatus	294.40	43.76	296.30	326.00	296.97	[illegible]	297.11	[illegible]	[illegible]	1.
Other Transportation Expenses	2,891.60	2,728.81	2,771.36	2,714.81	2,[illegible]	2,[illegible]	3,[illegible]	[illegible]	4,434.14	1.
	56,919.88	58,122.32	57,705.83	58,[illegible]	57,[illegible]	57,[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible] Transportation	439,907.16	426,898.97	435,602.71	427,[illegible]	426,[illegible]	413,[illegible]	440,[illegible]	[illegible]	[illegible]	[illegible]

People's Counsel Exhibit No. 74

Sheet #11

									Total 6 mos. to Dec. 31	Total 12 mos. to Dec. 31	Total 12 mos. to Dec. 31

[illegible] BALANCE

Operating Expenses [illegible] for Corresponding Months of Years 1926 and 1927,
Totals for Same Period, Totals for Twelve Months [illegible] for Closing Books and
Totals for Twelve Months After Closing Books.

Account No.	Classification	July 1926	July 1927	August 1926	August 1927	September 1926	September 1927	October 1926	October 1927	November 1926	November 1927	[illegible] 1926	[illegible] 1927
V.	Traffic												
(a)	Supt. & Solicitation - Salaries	389.17	348.67	351.50	312.50	328.33	287.92	311.17		322.50			
(b)	" " " - Expenses	81.01	78.31	77.26	77.29	98.49	70.84	113.62		78.18		2[illegible].17	
	Advertising	1,771.10	1,994.38	1,998.26	1,998.00	2,101.1	1,977.66	4,258.26		7,197.24		97.06	
(1)	Parks, Resorts and Attractions	-	-	-	-	-	-	-		-		3,41[illegible].35	
(a)	Twin Oak Park - Receipts	9,991.17	8,690.46	7,837.29	7,786.88	3,368.67	4,293.03	120.01		-		-	
(b)	" " " - Expenses	3,936.83	7,341.88	4,688.96	6,287.61	3,361.28	4,177.91	597.22		277.30		-	
(a)	Mt. Pine Park - Receipts	64,703.19	69,672.80	46,219.70	47,058.83	8,739.85	9,330.36	-		-		311.01	
(b)	" " " - Expenses	26,609.01	27,137.31	27,397.97	27,421.63	6,937.47	6,478.26	1,823.84		3,671.78		-	1
(c)	Miscellaneous Traffic Expenses	-	191.32	-	106.42	-	106.82	-		-		1,[illegible].42	
	Total Traffic	29,961.34	30,976.49	19,882.00	8,472.01	3,344.49	169.24	6,[illegible].10		6,[illegible].38		4,[illegible].30	
VI.	General and Miscellaneous												
(a)	Salaries of General Officers	10,688.00	10,813.88	10,737.89	10,814.21	10,186.75	11,[illegible].13	10,[illegible].37		11,[illegible].64			
(b)	Expenses " " "	311.26	199.15	432.13	308.44	1,139.78	71.02	1,[illegible].82		77.[illegible]		10,[illegible].09	
(a)	Salaries of General Office Clerks	17,708.92	18,458.74	17,887.33	18,500.05	17,732.81	18,[illegible].73	17,[illegible].07		18,[illegible].42		1,[illegible].42	
(b)	Expenses " " " "	-	-	-	-	-	-	-		-		18,[illegible].69	1
(a)	General Office Rent	4,719.34	4,788.01	4,719.34	4,788.01	4,719.34	4,78[illegible].01	4,719.34		4,[illegible].34		-	
(b)	General Office Supplies and Expenses	2,099.85	1,682.43	1,848.20	1,[illegible].39	1,[illegible].02	1,[illegible].74	1,[illegible].87		1,[illegible].21		4,[illegible].4	
(a)	Salaries General Counsel and Clerks	3,511.99	3,911.00	3,541.99	3,[illegible].00	3,[illegible].00	3,347.60	3,[illegible].24		3,[illegible].76		1,[illegible].40	
(b)	Law Expenses	2,173.33	2,240.33	2,205.83	2,442.69	2,840.11	2,881.33	2,[illegible].88		2,[illegible].21		2,811.17	
	Relief Department Expenses	1,514.29	1,532.32	1,547.07	1,[illegible].86	1,[illegible].82	1,662.68	1,[illegible].88		1,[illegible].1		1,[illegible].42	
	Pensions and Gratuities	8,140.46	8,439.20	7,106.32	8,[illegible].88	8,[illegible].12	8,580.24	8,[illegible].06		8,[illegible].82		1,[illegible].4	
(a)	Telephone Expense	2,700.00	2,700.00	2,700.00	2,700.00	2,700.00	2,800.00	2,[illegible].00		2,[illegible].47		5,[illegible].0	
(b)	Advertising (Miscellaneous)	58.97	81.82	28.26	29.38	33.66	[illegible].54	[illegible].18		47.[illegible]		[illegible]	
(c)	Directors and Executive Committee Fees	270.00	270.00	220.00	170.00	220.00	28[illegible].01	[illegible].00		[illegible].00		350.00	
(d)	Employees Club Room Expenses	37.22	9.4	84.87	8[illegible].64	30.72	11[illegible].22	[illegible].97		[illegible].16		[illegible].38	
(e)	Other Miscellaneous Expenses	5,406.14	5,167.65	5,316.27	5,867.92	4,607.28	4,[illegible].70	6,[illegible].07		7,[illegible]		[illegible]	
(f)	Employees Recreation Expenses	308.05	44.49	282.80	296.80	1,400.94	297.01	[illegible].11		[illegible].75		[illegible].11	
(g)	Tolfax Expenses	1,197.60	1,227.31	1,227.29	1,387.81	1,167.29	1,[illegible].73	1,[illegible].44		1,[illegible].0		[illegible].11	
	Valuation Expenses	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,[illegible].00	2,[illegible].00		2,000.00		1,[illegible].24	
	Amortization of Franchises	-	-	-	-	-	-	-		-		[illegible]	
(a)	Salaries of Claim Agt., Assistant & Clerks	8,743.84	9,687.26	8,787.83	9,716.82	8,787.88	9,752.17	[illegible].84		9,[illegible].84		[illegible]	
(b)	Injuries and Damages	27,869.87	30,956.98	32,547.27	30,705.82	34,002.01	[illegible].46	[illegible].22		[illegible].43		9,[illegible].3	
	Insurance	2,[illegible].00	2,800.00	2,[illegible].40	2,[illegible].00	3,600.00	[illegible].00	[illegible].00		[illegible].00		[illegible].00	
(a)	Stationery and Printing	3,721.26	3,740.93	3,820.78	3,787.11	3,973.91	[illegible].12	[illegible].84		[illegible].[illegible]		[illegible].[illegible]	
	Transfer Expense	3,442.70	3,287.84	3,[illegible].51	3,[illegible].11	[illegible].[illegible]	[illegible].14	[illegible].[illegible]		[illegible].[illegible]		4,[illegible].83	
	Other Expense	3,421.00	3,709.28	3,[illegible].24	3,[illegible].79	[illegible].[illegible]	[illegible].73	[illegible].[illegible]		[illegible].[illegible]		4,[illegible].29	
(a)	Taxes Expense	3,[illegible].78	3,[illegible].70	3,[illegible].69	3,[illegible].64	[illegible].[illegible]	[illegible].[illegible]	[illegible].[illegible]		[illegible].[illegible]		[illegible].[illegible]	
	Taxes Expense	-	-	[illegible]	-	-	-	-		-		[illegible].[illegible]	
	Total General & Miscellaneous	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]		[illegible]	
	[illegible]	1,[illegible].36	1,[illegible].39	1,719.26	1,[illegible].84	1,[illegible].69	1,[illegible].95	1,[illegible].66		982.82		1,[illegible].[illegible]	
	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]		[illegible]	

Applicant's Rebuttal Exhibit No. 41

Sheet #12

[illegible] Balance Sheet as at [illegible] Per Balance Sheet

Operating Revenues by months for twelve months of Years 1926 and 1927,
Totals for Same Period, Totals for Twelve Months by Monthly Books and
Totals for Twelve Months After Audit Books.

Actual		Per Books		Estimated		Estimated		Total 6 Mos. to June 30		Total 12 Mos. to Dec. 31		Total 12 Mos. to Dec. 31	
1926	1927	1926	1927	1926	1927	1926	1927	1926	1927	1926	1927	Before Closing	After Closing
348.87	311.60	312.82	328.13	317.92	311.60	323.84		217.17	1,970.02	4,139.02		4,139.02	
78.31	77.26	77.89	98.49	77.84	77.26	77.26		87.85	569.66	1,348.87		1,348.87	
1,384.38	1,386.26	1,388.51	1,411.31	1,377.26	1,386.26	1,386.26		1,341.38	17,271.7	27,384.19		23,714.78	
-	-	-	-	-	-	-		-	-	-		-	
8,690.46	7,837.29	7,786.88	5,366.87	4,293.03	120.01	-		-	-	-		-	
7,641.88	4,688.96	3,287.61	3,254.26	4,177.41	720.02	217.9		-	21,310.14	31,132.87		33,130.82	
9,672.60	46,219.70	47,988.83	6,729.85	9,230.36	-	-		211.31	13,322.17	22,961.39		22,967.39	
7,137.31	27,397.97	21,471.2	7,822.17	8,478.36	1,938.4	5,671.8		-	117,682.74	141,428.03		141,641.70	
191.32	-	186.42	-	186.82	-	-		1,324.46	74,841.82	119,741.29		119,748.29	
0,976.49	19,882.00	8,472.61	3,814.49	169.24	8,477.10	8,833.35		4,830.32	27,607.53	3,227.45		4,104.33	
9,813.88	10,737.89	10,813.41	10,886.78	11,007.13	11,010.07	11,010.4		10,982.89	68,048.74	128,117.38		128,317.38	
199.15	422.12	268.44	1,192.78	21.02	1,019.82	7.8		1,184.82	2,210.82	10,048.91		10,048.91	
8,458.74	17,887.35	18,592.26	17,592.86	18,268.73	17,775.27	17,[illegible]		18,07[illegible]	106,990.54	216,148.10		216,148.10	
-	-	-	-	-	-	-		-	-	-		-	
4,788.01	4,719.84	4,788.01	4,719.84	4,78[illegible]	4,719.84	4,72[illegible]		4,71[illegible]	29,316.84	[illegible] 32.73		58,032.73	
1,662.42	1,564.29	1,[illegible]9	1,[illegible]6.74	[illegible]	[illegible]	1,30[illegible]		[illegible]	2,814.82	12,317.42		12,326.59	
3,311.00	3,541.84	3,47[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]		[illegible]	
2,340.33	2,203.62	2,447.39	2,548.11	2,28[illegible]	2,[illegible]	[illegible]		2,821.17	22,223.85	44,757.81		44,757.81	
1,537.32	1,547.7	1,[illegible]	1,[illegible]	1,568.[illegible]	1,[illegible]	[illegible]		1,799.42	18,311.77	29,339.68		29,339.68	
8,439.20	7,106.82	8,[illegible]8	8,[illegible]	8,[illegible]	8,[illegible]	[illegible]		1,[illegible]	9,269.72	18,763.41		18,763.41	
2,700.00	2,700.00	2,700.0	2,7[illegible]	2,800.00	[illegible]	[illegible]		[illegible]	42,210.25	[illegible]		[illegible]	
61.82	28.6	27.[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]	16,200.00	[illegible]		[illegible]	
270.00	220.00	170.00	220.00	[illegible]	[illegible]	[illegible]		[illegible]	241.04	1,[illegible]		1,071.89	
3.4	14.17	80.04	[illegible]	[illegible]	[illegible]	[illegible]		300.00	1,730.00	[illegible]		[illegible]	
5,167.65	6,316.17	5,987.92	4,807.28	[illegible]	[illegible]	[illegible]		[illegible]	1,470.18	[illegible]		[illegible]	
41.49	282.82	296.80	1,800.94	[illegible]	[illegible]	[illegible]		[illegible]	50,873.72	[illegible]		[illegible]	
1,223.31	1,227.29	1,387.31	1,[illegible]	[illegible]	[illegible]	[illegible]		[illegible]	2,728.11	[illegible]		[illegible]	
2,000.00	2,000.00	2,[illegible]	2,000.00	[illegible]	[illegible]	[illegible]		[illegible]	8,042.24	[illegible]		[illegible]	
-	-	-	-	-	-	[illegible]		[illegible]	[illegible]	[illegible]		[illegible]	
9,683.26	8,767.49	9,718.12	8,767.88	9,768.17	[illegible]	9,814.24		[illegible]	[illegible]	[illegible]		[illegible]	
9,956.98	32,547.27	30,[illegible]	34,002.01	[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	107,[illegible]		107,[illegible]	
3,800.00	2,486.40	[illegible]	3,800.00	[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]		[illegible]	
3,340.93	3,820.28	3,[illegible]	3,[illegible]	[illegible]	[illegible]	[illegible]		[illegible]	20,[illegible]	[illegible]		[illegible]	
3,227.84	3,[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]	27,042.29	[illegible]		[illegible]	
3,209.28	3,417.24	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]		[illegible]	
3,813.70	3,[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]	21,787.44	[illegible]		[illegible]	
-	[illegible]	-	[illegible]	-	-	-		[illegible]	[illegible]	[illegible]		[illegible]	
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

DEPRECIATION

1912 to August 31, 1927.

	Provision	Charges To Reserve			Balance for Respective Years
		As Recorded	**Less: Items Credited and Transferred	Revised	
1912	428,574.47	379,115.78	121,436.60	257,679.18	170,895.29
1913	530,225.54	499,898.09	92,655.04	407,242.05	122,983.49
1914	469,395.31	373,595.94	90,038.93	283,557.01	185,838.30
1915	410,547.73	325,303.36	92,656.04	232,647.32	177,900.41
1916	495,702.55	365,348.10	171,169.90	194,178.20	301,524.35
1917	528,041.84	559,814.82	146,072.26	413,742.56	114,299.28
1918	596,485.07	766,977.14	135,462.21	631,514.93	* 35,029.86
1919	739,711.68	762,215.38	135,462.21	626,753.47	112,958.21
1920	865,679.94	764,476.38	128,745.21	635,731.17	229,948.77
1921	816,643.27	1,139,769.25		1,139,769.25	* 323,125.98
1922	806,129.60	755,088.32		755,088.32	51,041.28
1923	823,089.94	744,948.56		744,948.56	78,141.38
1924	822,662.72	814,344.32		814,344.32	8,318.40
1925	831,061.01	722,955.28		722,955.28	108,105.73
1926	835,785.45	619,043.24		619,043.24	216,742.21
August 31, 1927	538,224.79	644,973.26		644,973.26	* 106,748.47
Totals	10,537,960.91	10,237,867.52	1,113,699.40	9,124,168.12	1,413,792.79

** ITEMS CREDITED AND TRANSFERRED

	Spec. S. Fund Debits Restored to Dep.	10% Payments on Equipment	Other Items	
1912	87,344.66	31,474.83	2,617.11	121,436.60
1913	92,656.04			92,656.04
1914	92,656.04		* 2,617.11	90,038.93
1915	92,656.04			92,656.04
1916	202,644.73	* 31,474.83		171,169.90
1917	146,072.26			146,072.26
1918	135,462.21			135,462.21
1919	135,462.21			135,462.21
1920	128,745.21			128,745.21

FOLD OUT IS TOO LARGE TO BE FILMED

THE UNITED RAILWAYS AND ELECTRIC COMPANY

RENEWALS, REPAIRS AND RETIREMENTS OF FIXED CAPITAL CHARGED DEPRECIATION RESERVE; RETIREMENTS CHARGED PROFIT AND LOSS AND SUSPENSE; FOR THE PERIOD JANUARY 1, 1912 TO AUGUST 31, 1927, WITH TOTALS AND ELIMINATIONS AND AVERAGES FOR ONE YEAR.

	Total Depreciation Expenditures Jan. 1, 1912 to Aug. 31, 1927.	Add: Retirements Charged Profit and Loss.	Add: Retirements in Suspense.	Total	Eliminate: Items not Retirements	Eliminate: Uncompleted Work Charged against the Reserve.	Net (15 8/12 Years)	Average per Year.
Renewals and Repairs.								
Track Reconstruction	5,233,353.88			5,233,353.88		572,792.36		
Trolley Wires, Poles and Fixtures, etc.	222,578.64			222,578.64				
Underground Conduits	1,474.99			1,474.99				
Track Tools	3,383.38			3,383.38				
Shops and Car Houses	29,827.83			29,827.83				
Miscellaneous Buildings	2,496.84			2,496.84				
Park and Resort Property	19,052.53			19,052.53				
Retirements.								
Track, Overhead, etc.	409,955.51		177,986.63	586,942.14				
Trolley Wire	41,673.21			41,673.21				
Distribution Feeders	155,328.62			155,328.62				
Track Tools	4,280.07			4,280.07				
Miscellaneous Buildings	1,051.42			1,051.42				
				6,301,443.55		572,792.36	5,728,651.19	365,658.59
Equipment								
Alterations and Repairs								
Vestibuling, Converting, etc. etc.	534,687.66			534,687.66				
Shop Equipment	2,092.02			2,092.02				
Furniture	1,128.76			1,128.76				
Miscellaneous Equipment	7,395.97			7,395.97				
Retirements								
Fenders, Wheelguards, Lamps	16,534.38			16,534.38				
Loss on Cars Sold and Destroyed	314,303.78	118,466.18	898,076.00	1,330,845.96				
Shop Equipment	1,100.00			1,100.00				
Furniture	128.65			128.65				
Horses and Automobiles	63,236.37			63,236.37				
Motors Renewed 110 Sp. Pt. Cars		178,327.26		178,327.26				
Trackless Trolley Busses	27,088.44			27,088.44				
Car Trust Payments	96,250.00			96,250.00	96,250.00			
				2,258,815.47	96,250.00		2,162,565.47	138,036.09
Power								
Alterations and Repairs								
Power Plant Buildings	7,907.78			7,907.78				
Sub-Station "	5,185.71			5,185.71				
Power Plant Equipment	120,180.30			120,180.30				
Sub-Station "	8,794.98			8,794.98				
Transmission System	4,322.71			4,322.71				
Retirements								
Power Plant Equipment	172,341.49	129,765.00		302,106.49				
Sub-Station "								
Transmission System	46,911.46			46,911.46				
Pratt St. P.H. Sale (Excess over $4,000,000)	327,436.16			327,436.16				
Pratt St. P.H. Dept. (Power Bill)	1,252,330.00			1,252,330.00	1,252,330.00			
				2,046,530.17	1,252,330.00		114,200.17	51,970.22
	9,184,166.12	426,688.44	1,076,362.63	10,526,789.19	[illegible]	[illegible]	[illegible]	[illegible]

People's Counsel Exhibit No. 42

Sheet No. 3

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

DEPRECIATION RESERVE

COMPUTATION OF THE CONDITION OF THE RESERVE IF ACCRUALS HAD BEEN MADE THERETO SINCE 1899.

YEAR	OPERATING REVENUE	5% of OPERATING REVENUE	RETIREMENTS	BALANCE WHICH WOULD HAVE ACCRUED IF 5% HAD BEEN SET UP.
1899 (9 Mos.)	3,351,687.84	167,584.39		
1900	4,427,223.29	221,361.16		
1901	4,687,985.20	234,399.26	---- (Est)1,425,000.	
1902	5,032,281.70	251,614.08		
1903	5,468,657.04	273,432.85		
1904	5,440,942.13	272,047.11		
1905	6,023,698.26	301,184.91		
1906	6,583,102.51	329,155.12		
1907	7,018,081.95	350,904.10		
1908	6,834,802.27	341,740.11	------ (a)2,401,186	
1909	7,209,983.76	360,499.18		
1910	7,687,894.73	384,394.74		
1911	8,025,758.01	401,287.90		
1912	8,520,443.47	428,574.47		
1913	8,993,384.59	530,225.54		
1914	9,154,125.41	469,395.51		
1915	8,980,710.27	410,547.73		
1916	9,914,051.02	495,702.55		
1917	10,560,836.83	528,041.84		
1918	11,929,701.48	596,485.07	------ (b)8,705,417	
1919	14,794,233.53	739,711.68		
1920	17,313,598.84	865,679.94		
1921	16,332,865.43	816,643.27		
1922	16,122,592.02	806,129.60		
1923	16,461,796.86	823,089.94		
1924	16,453,254.31	822,662.72		
1925	16,621,220.20	831,061.01		
1926	16,715,709.07	835,785.45		
1927 (8 Mos.)	10,736,584.06	536,224.79		
	14,427,565.82	12,531,605.		1,898,962.15

(a) Total Charges to "Extraordinary Expenses" Written out to Fixed Capital in 1920

	6,417,186.89
	4,015,998.75
	2,401,186.84

(b) Expenditures as shown on Peoples Counsel Exhibit No. 42, Sheet 2.

People's Counsel Exhibit No. 42
Sheet No. 4

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE.

SCHEDULE OF DEPRECIATION RESERVE WHICH WOULD HAVE RESULTED IF ACCRUAL HAD BEEN MADE FROM APRIL 1, 1899 TO AUGUST 31, 1927 AT THE RATES RESULTING FROM COMPANY'S EXHIBIT NO. 25.

Year		Average Fixed Capital (See Note A)	Average Fixed Capital Less Superseded Property (See Note B)	Depreciation Accrued at 4% Average Total Property (See Note C)
1899	(9 Months)	$ 32,446,962	$ 24,044,555	$ 721,336
1900		33,571,514	25,167,107	1,006,684
1901		34,006,006	26,603,599	1,064,144
1902		35,912,566	27,508,159	1,100,326
1903		37,255,514	28,851,107	1,154,044
1904		38,735,592	30,331,185	1,213,247
1905		39,483,612	31,079,205	1,243,168
1906		40,832,014	32,427,607	1,297,104
1907		43,079,550	34,675,143	1,387,006
1908		44,793,724	36,389,317	1,455,573
1909		45,489,095	37,084,688	1,483,388
1910		46,121,208	37,716,801	1,508,672
1911		47,109,148	38,704,741	1,548,190
1912		47,854,363	39,449,956	1,577,998
1913		48,313,820	39,909,413	1,596,377
1914		49,000,775	40,596,368	1,623,855
1915		49,523,362	41,172,955	1,646,918
1916		50,141,024	41,736,617	1,669,465
1917		51,509,018	43,104,611	1,724,184
1918		53,487,986	45,083,579	1,803,343
1919		55,430,752	46,026,345	1,841,054
1920		57,366,075	48,961,668	1,958,467
1921		56,701,794	46,297,387	1,931,895
1922		55,348,742	46,944,335	1,877,773
1923		55,989,502	47,584,095	1,903,364
1924		57,246,072	48,841,665	1,953,667
1925		58,503,061	50,098,654	2,003,946
1926		58,502,145	50,097,736	2,003,909
1927	(8 Months)	58,846,996	49,442,589	1,329,136
	Total Accruals			$44,628,233
	Retirements as shown in Peoples Counsel Exhibit No. 42, Sheet 3.			12,531,603
	Net Balance which would have remained in Reserve			$32,096,630

(A) As determined by the People's Counsel Exhibit #13 in Case No. 533.
(B) Superseded Property as shown by People's Counsel Exhibit #13 in Case 533, amounted to $8,404,407.
(C) Based on percentage that amount claimed by company ($8,800,000) bears to total physical property in Valuation.

164

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

ACCIDENT AND DAMAGE ACCOUNT

September 30, 1927

Down totals give cost applicable to respective years.
Cross totals give expenditure actually made in the respective years, and the provision from income account.

	1926	1925	1924	1923	1922	1921	Prior Years	Total Settlements for Suits and Claims	Add: Salaries for Respective Years (from top line)	Total Expenditure	Provision	½ Provision of Pass. Revenue
Salaries of Dept.	$107,108.66	$109,658.65	$106,779.86	$103,326.52	$ 97,767.88	$108,731.65	$	$	$	$	$	
Settlements:												
In 1926	290,328.65	127,756.67	24,329.14	5,977.52	3,735.32		1,241.19	453,368.49	107,108.66	560,477.15	535,727.49	3½
" 1925		314,091.57	108,291.13	26,239.18	4,357.19	124.77	2,965.85	456,069.69	109,658.65	565,728.34	533,153.42	3½
" 1924			267,333.57	103,128.27	31,483.98	8,890.99	6,002.15	416,838.96	106,779.86	523,618.82	527,787.22	3½
" 1923				258,707.35	119,092.34	39,897.73	14,259.21	431,956.63	103,326.52	535,283.15	567,967.15	3½
" 1922					231,982.18	135,928.20	125,345.57	493,255.95	97,767.88	591,023.83	636,401.84	4
" 1921						276,218.04	280,777.79	556,995.83	108,731.65	665,727.48	645,890.06	4
	397,437.31	551,506.89	506,733.70	497,378.84	488,416.89	569,791.38	430,591.76	2,808,485.55	633,373.22	3,441,858.77	3,446,927.18	
In 9 Mos. 1927	122,660.70	19,577.37	11,415.52	763.81	1,946.00	10.00	552.62			156,820.78		
Est. balance 1926 and prior years	108,559.43	15,467.53	9,325.95	94.69	2,780.48	1,056.83	1,761.82			139,046.73		
	628,657.44	586,551.79	527,475.17	498,237.34	493,145.37	570,858.21	431,800.96			3,736,726.28		

RECAPITULATION

	Costs Applicable to Respective Years.	Expenditures Made in the Respective Years.	Provision Made in the Respective Years.	½ Provision of Passenger Revenues.	Reserve
1926 (Est.)	628,657.44	560,477.15	535,727.49	3½	302,160.97 - At Dec. 31, 1926.
1925	586,551.79	565,728.34	533,153.42	"	326,910.63 - " " " 1925.
1924	527,475.17	523,618.82	527,787.22	"	359,485.55 - " " " 1924.
1923	498,237.34	535,283.15	567,967.15	3½	386,517.16 - " " " 1923.
1922	493,145.37	591,023.83	636,401.84	4	322,633.15 - " " " 1922.
1921	570,858.21	665,727.48	645,890.06	4	277,255.14 - " " " 1921.
					297,092.56 - " " " 1920.
	3,304,925.32	3,441,858.77	3,446,927.18		
Prior Years	431,800.96				(245,985.05 at September 30, 1927)

Add:
Estimated payments required to meet unsettled claims and suits of 1926 and pri-

People's Counsel Exhibit No. _
Sheet No. 2

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE.

Total number of accidents and cost per accident for which settlements were made during the Years 1924, 1925 1926 and 8 mos. of 1927.

	1924	1925	1926	1927 (To Aug.) (31,1927)
Total Number of Accidents.	4,162	4,343	4,374	2,879
Direct Cost of Settlements.	$353,549.58	393,871.62	387,405.62	286,678.94
" " " " per accident.	84.95	90.69	88.57	99.58
Cost of Accidents exclusive of Department Salaries*.	416,838.96	456,069.69	453,368.49	329,439.81
Cost of Accidents exclusive of Department Salaries per accident.	100.15	105.01	103.65	114.43
Total Cost of Accidents, including Department Salaries.	523,618.82	565,728.34	560,477.15	405,783.18
Total Cost of Accidents, including Department Salaries per accident..	125.81	130.26	128.14	140.95

* Includes costs in addition to settlements such as court costs, Doctors and Hospital Bills, Witness Fees, Employees salaries as witnesses, etc.

166

People's Counsel Exhibit No. 44

UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Property Appraisal Costs during the Period January 1, 1913 to September 30,1927.

VALUATION AS OF JANUARY 1, 1914.

	Expenses	Amortization	Balance Unamortized at end of Year.
1913	$ 2,785.04	$	$ 2,785.04
1914	51,127.44	18,000.00	35,912.48
1915	80,260.12	18,000.00	68,172.60
1916	15,162.31	18,000.00	65,334.91
1917	4,241.66	18,000.00	51,576.57
1918	3,037.50	18,000.00	36,614.07
1919	2,000.00	18,000.00	20,614.07
1920	None	20,614.07	None
	128,614.07	128,614.27	None

FORMATION OF VALUATION DEPARTMENT AUGUST 1921.

	Expenses	Amortization	
1921	7,471.80	7,471.80	None
1922	16,636.60	16,636.60	"
1923	15,865.99	15,865.99	"
At May 31, 1924	6,512.80	6,550.00	* 37.20
(See Note)	46,487.19	46,524.39	* 37.20
From June 1,1924	85,284.09	14,000.00	71,246.89
1925	147,821.27	24,000.00	195,068.16
1926	26,147.76	24,000.00	197,215.92
To Sept. 30,1927	14,604.95	18,000.00	193,822.87
	273,860.07	80,000.00	193,860.07
	360,347.26	126,524.39	193,822.87

NOTE: During June 1924 active work on valuation as of January 1, 1924 was begun. At the present time, October 1927, the running expenses of the valuation department is approximately $1,100 per month.

(* Credit).

167

People's Counsel Exhibit No. 44

Sheet No. 2.

UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

PROPERTY APPRAISAL COSTS

JUNE 1, 1924 TO DECEMBER 31, 1924

Office Pay Roll (Monthly)	$ 3,716.21
Salary of R. B. Rifenberick	4,375.00
Salary of W. H. Malthie	3,500.00
Salary of Bancroft Hill	4,375.00
Special Pay Roll	42,385.52
V. V. Pagon	6,776.50
Salary of T. H. Graser	1,719.35
Supt. of Motive Power Equipment - Services	1,174.75
Supt. of Way	39.00
Petty Cash Expenditures	373.95
Stationery and Printing	299.62
Traveling Expenses	269.85
J. W. Shops - Labor Appr. Work	1,600.55
J. W. M. of Way -" " "	1,559.90
J. W. M. of P. Dist." " "	1,589.05
J. W. Elec. Sta. - " " "	998.88
Supply - Miscel. Supplies	131.98
Accts. Payable - Stationery and Printing	1,258.54
" " - Furniture and Office Exp.	651.62
" " - Drafting Room Supplies	1,819.93
" " - Office Rent	1,156.81
" " - Economy Meters	300.00
" " - Monroe Calculating Machine & Dalton Mach.	900.00
" " - Instruments - Wirtzograph and Planimeter	200.00
" " - Garage Expense (Gas)	48.54
R. L. Chamberlaine, Somma & S. R. Holmes, Somma,	1,100.00
Moving Expense, T. H. Graser	400.00
Independence Bureau, Inventory of Office Records,	1,348.54
Enterprise Patterns & Models Works (Patt. & Mod.)	1,200.00
York Safe & Lock Co.	15.00
Total	$85,284.09

165

People's Counsel Exhibit No. 44

Sheet No. 1.

UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

PROPERTY APPRAISAL COSTS

YEAR 1925

Monthly Pay Roll	
Special " "	$ 4,827.46
Salary of R. B. Hitchcock	24,719.90
" " W. H. Maltbie	4,378.00
" " Bancroft Hill	6,000.00
" " W. W. Pagon	7,500.00
" " T. N. Fraser	4,631.80
" " H. L. Chamberlaine (Bonus)	2,925.00
" " J. U. Bragg	1,300.00
H. M. Grafton	750.00
J. G. Brill Co.	500.00
Continental Trust Co. - Rent of Box	3,000.00
John Waters Building Co.	112.50
T. D. Chalborne Co.	3,850.62
Jack Salamon, Stenographer's Services	3,300.00
F. F. Korrman " " C. & P. Tel. Case	1,681.80
L. P. Temple, Carbon Copy, " "	3,228.80
J. A. Mahvey- (Spec. Services) (Bonus)	986.00
A. C. Thomas "	35.00
James W. Rowe "	45.00
Murray G. Waters "	22.50
Traveling and Miscel. Expenses (A. J. Dietz)	42.00
Supplies (Miscel.)	3,772.76
Stationery and Printing	129.92
Supt. M. P. Equip.	536.81
J. W. (Shops)	1,145.00
" (M. of W)	797.50
" (M. of P.D.)	30.05
" (Elec. Stn.)	225.72
Accts. Payable (Office Rent)	60.04
" Stationery and Printing and Office Supplies	1,643.96
" Dalton and Monroe Machines (Rent)	1,165.93
" Typewriters "	265.00
" Edw. Bennenburg & Sons, Services,	451.62
" Office Furniture	80.00
Emerson Hotel, Room Rent,	148.78
Consolidated Engineering Co., Services	1,829.10
Frainie Bros. and Haigley	14,200.00
Walter Jackson (Services)	3,496.00
J. H. Hollander (Services)	500.00
H. P. Weaver "	2,500.00
S. R. Holmes "	100.00
H. K. Crook Co. "	129.80
Day and Zimmerman "	500.00
Albert S. Richey "	5,000.00
A. T. Spencer "	3,648.89
M. J. Wolfe (Chicago Surface Lines), Services	2,004.38
Jonathan Wolfe, Services	96.38
Wm. Martiem & Co. "	300.00
Venable, Baetjer & Howard,	15,000.00
	17,500.00
Total	$147,821.27

169

People's Counsel Exhibit No. _____

Sheet No. 4.

UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

PROPERTY APPRAISAL COSTS

YEAR 1926

Monthly Pay Roll	$ 4,034.88
Special Pay Roll (Miss Hilda Potts & H. K. McShane)	259.28
Salary of Bancroft Hill	7,500.00
" " W. H. Malthie	11,000.00
" " Hy. H. Waters	1,758.35
" " F. F. Kornman, Stenographer,	28.80
Continental Trust Co., Rent of Box	60.00
Supplies	1.17
Expenses, Petty Cash, &c.	29.30
Cash, A. J. Dietz, Expenses,	15.40
Accounts Payable, Office Rent,	1,125.01
Lawyers Co-Operative Publishing Co., Reports, &c.,	17.50
Public Utilities Reports,	20.00
Accounts Payable, Supplies, Folders, Prints, Line-A-Time,	243.69
U. S. Daily, Subscription	15.00
Court of Appeals, Copy of Opinion	30.25
Government Printing Office, Valuation Decisions,	7.50
Supt. of Documents, U.S. Printing Office, I.C.C. Decisions,	2.25
	$ 26,147.96

YEAR 1927 (To Sept. 30).

Supt. of Documents, U. S. Govt., Decisions on Valuation	$ 4.50
Monthly Pay Roll	2,596.00
Salary of Bancroft Hill	5,625.00
" " Henry H. Waters	1,575.00
Continental Trust Co., Rent of Box	35.00
A. J. Dietz, Expenses,	8.65
Accounts Payable, Office Rent	257.75
" " National Elec. Light Association, Subscription - "Rate Research",	20.00
" " Grand Rapids Show Case Co. - Filing Cabinet	39.75
" " " " " " " " - Typewriter Table	15.00
" " M. Houghton Co., Index Book,	7.80
" " McGraw Hill Book Co. Books,	6.50
" " Lawyers Co-Operative Publishing Co., Books	7.50
Petty Cash Expense	25.10
James A. Young, Clerk, Court Costs,	7.70
Public Service Commission Expenses, Valuation Case,	172.00
King Brothers Printing Brief " " "	42.00
Clarence W. Miles, Fees,	10.00
Chas. R. Whiteford, Clerk, Court Costs,	39.30
F. F. Kornman, Stenographic Service,	112.50
Venable, Baetjer & Howard, Services,	4,000.00
	$ 14,606.95

170

People's Counsel Exhibit No. 45

UNITED RAILWAYS AND ELECTRIC COMPANY

Estimated Revenue lost through the Issuance of Free Tickets to Employees and Park Concessionaires during 1926.

	No. of Books.	No. of Coupons per Book.	Total No. of Coupons or Tickets.	Revision on Account of Unused Tickets *	Revenue lost at 7½¢ token fare.
Issued to Employees:					
Coupon Pass Books - Male	6451	100	645,100	554,399	$ 41,579.93
" " " - "	4391	200	878,200	754,725	56,604.37
" " " - Female	2453	100	245,300	210,810	15,810.75
Association Coupon Pass Books - Male	50,000	50	2500,000	2,148,500	161,137.50
" " " " - Female	1200	50	60,000	51,564	3,867.30
Male Pass Tickets			53,630	46,090	3,456.75
Female "			21,880	18,804	1,410.30
Male Emergency Tickets			29,210	25,103	1,882.72
Female " "			8,430	7,245	543.38
Shop Tickets A.M. and P.M.			49,000	42,111	-
Power " " " "			21,000	18,047	-
Transportation Tickets A.M. and P.M.			45,000	38,673	-
Maintenance of Way Tickets			720,000	618,718	-
Issued to Park Concessionaires and their Employees:					
Coupon Pass Books to Concessionaires	294	100	29,400	25,266	1,894.95
Bay Shore Tickets			71,743	61,656	4,624.20
Owynn Oak Park Tickets			23,400	20,110	1,508.25
			5,674,893	4,876,952	294,320.40
Allowance for transfer privileges		**			123,437.29
Estimated Annual loss of Revenue					$171,883.11

* Based on pro-rata of total tickets used to total tickets issued (85.94%)

** Based on pro-rata of transfer passengers to total passengers (41.60)

People's Counsel Exhibit No. 46

Sheet #1

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Valuation as of December 31, 1923, with Additions Thereto and Retirements Therefrom by Years, During the Period January 1, 1924 to August 31, 1927.

	1924		1925		1926		(August 31st) 1927	
Valuation of Property as prescribed by Commission		70,000,000.00						
Less Grants in Aid of Construction		90,259.45						
Valuation at Beginning of Year with Additions and Retirements		69,909,740.55		70,582,233.15		70,875,087.40		70,644,335.88
Additions to Fixed Capital	1,562,255.38		1,139,960.12		642,563.07		757,061.24	
Less Cost of Removal of Retired Property*	136,559.86	1,445,705.52	149,088.62	990,871.50	96,863.63	545,719.44	49,739.06	707,322.18
Articulating and permanently coupling cars (Suspense)		25,671.27		406,160.31		229,146.75		-
Improvements to leased property of the Maryland Electric Railways Company		29,491.81		[illegible]		13,545.31		20,346.83
TOTAL ADDITIONS		1,500,868.60		[illegible]		788,411.48		727,691.01
Retirements of Fixed Capital at Valuation Prices		828,376.00		1,139,187.00		1,019,163.00		1,259,800.00
Grants in Aid of Construction		-		-		-		20,211.45
Total Deductions		828,376.00		[illegible]		[illegible]		[illegible]
Net Increase for Year		672,492.60		[illegible]		(230,751.52	Red figures	540,120.54)
Total at End of Year		70,582,233.15		[illegible]		70,644,335.88		[illegible]
AVERAGE FOR THE YEAR		70,245,986.85		[illegible]		70,759,711.64		-

*Represents 20% of the Cost of Track Reconstruction and Renewal.

People's Counsel Exhibit No. ____

Sheet #2

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Summarization of Additions and Retirements of Fixed Capital for the Year 1924.

		Total	In Valuation	Not In Valuation
Additions				
United Railways & Electric Co.				
Engineering Department -	Regular	82,861.92	-	82,861.92
	Franchise Charges	8,028.00	8,028.00	-
	Paving Charges	4,054.11	4,054.11	-
	Track Reconstruction	682,799.31	-	682,799.31
Rolling Stock & Shops Department -	Regular	71,552.19	-	71,552.19
	Maryland Electric Cars	489,845.55	489,845.55	-
Power Department		92,914.53	-	92,914.53
Miscellaneous		700.00	-	700.00
Maryland Electric Railways Co.				
Road and Equipment Account		1,258,443.45	646,245.34	622,198.11
Special Sinking Fund Account		29,239.32	-	29,239.32
Depreciation Fund Account		-	-	-
TOTAL ADDITIONS		2,730,438.38	1,148,173.00	1,582,265.38

	Book Figures.	Valuation Figures.
Retirements		
United Railways & Electric Co.		
Prior to June 30, 1914	100,865.66)	
Since June 30, 1914	16,337.97)	828,376.00*
Track Reconstruction	346,821.04)	
Fenders on Maryland Electric Car	680.00)	
Maryland Electric Railways Co.		
85 Cars Transferred to United Rys. & Electric Co.	440,861.00	(Transfer)
TOTAL RETIREMENTS	905,565.67	
NET ADDITIONS	1,824,872.71	

Depreciated Valuation Accounts (Sheet No.)	649,358.00
Add Overheads in Valuation (22.3% of Cost to Reproduce New)	179,018.00
Net Retirements at Depreciated Valuation Figures	828,376.00

173

People's Counsel Exhibit No. ___
Sheet #3

UNITED RAILWAYS AND ELECTRIC COMPANY

Additions to and Deductions from Fixed Capital by Jobs for the Year 1924.

Authority No.	Explanation of Work.	Charged Fixed Capital.
	Engineering Department	
68-23	Schwind's Quarry (Curve)	2,589.99
130-23	Columbia Ave. and Pena Street (Curves)	10,616.65
137-23	Park Heights and Sylie Ave (St. hand Crossover)	747.71
139-23	Hudson and Third Sts. (double Curves)	1,318.27
150-23	W. Baltimore St. C. H. (6 Bumpers)	764.27
30-24	Reisterstown Road and Park Heights Avenue extending platform	1,770.65
90-24	Washington Boulevard (Auto. Switching device)	526.48
110-24	Belair Road (Switch) " " "	861.79
87-24	Lombard and Eutaw and Camden and Eutaw (Curves)	6,123.48
96-23	Concrete Pole Plant (Carroll Park)	18,484.00
-	Paving Bush Street (Mayer and C.C.) (Carroll Park Shops)	944.80
80-24	Edmondson Ave Car House (Loop)	5,490.82
120-24	Baltimore and Holliday Streets (Curve)	127.77
122-24	Curves N. E. Cor. Madison Ave. and Whitelock Street a/c of rerouting Linden Ave and Garrison Boulevard Lines	9,877.15
124-24	Roland Ave and 40th Street (Crossover)	2,618.17
126-24	Fait Ave Across Lakewood Avenue - Adjust double tracks account of paving	678.97
131-24	2 Crossovers Greenmount Ave N. of 33rd St. and one Crossover Cornish Ave. E. of Montebello	5,773.73
133-24	North and Madison Avenues (Auto. Switch)	415.51
137-24	Lombard Street at Calvert and Light (Auto. Switches)	620.34
152-24	Pena Street and Washington Boulevard (Auto. Switch)	515.42
156-24	Belvedere S. of Groveland Avenue (Crossover)	176.79
		70,155.74

People's Counsel Exhibit No.

Sheet #4

[illegible] RAILWAYS AND ELECTRIC COMPANY

Additions to and Reductions from Fixed Capital by Jobs for the year 1924.

Authority No.	Explanation of Work		Charged Fixed Capital.
	Engineering Department (Cont'd).		
A-[illegible]-24	8 Ingersoll Rand Type C 6-25 Paving Breakers #[illegible], #[illegible], #[illegible]		645.32
A-[illegible]-24	1 Universal Rotary Track Grinder Ser. #1153-111 1 Hercules Swing Frame Grinder		2,038.94
A-[illegible]-24	8 Portable Air Compressors 6 Tie Tampers 9 Concrete Breakers 16 Steels		6,695.92
A-[illegible]-24	1 Spring and Rubber Tire Mounting for Air Compressor (7 x 6-5-20 Portable)		430.00
A-[illegible]-24	Promenade to Dance Hall- Cayuga Oak Park		898.00
	TOTAL		[illegible],661.92
	Mayor and City Council - Franchise Changes		
1[illegible]	Storage Tracks on Lot Balts. and Smallwood Sts. (1918)		179.00
1[illegible]	Calvert and Redwood Streets (Curves) (1919)		130.80
1[illegible]	S.S. Car Fairmount and Wolfe Streets (1919)		[illegible]0.00
1[illegible]	Connecting Tracks and Curves - Windsor Mill Road, Walb. Jct. (1918)		[illegible]0.00
1[illegible]	Tracks Curves etc., Year 1920 Hudson St. - Elwood to Ord. Towne St. bet. Gliedon and 1st St. Crossover Hanford and Hudson Spec. Co. Wolfe and Rank Streets " " Eastern Ave. and Ann Sts." " " " " Wolfe " " "	Ord. No. 899	4,[illegible].00
1[illegible]	Belview Av. across Belvedere Av. Cayuga Oak Ave. Crossover (1921)	Ord. No. [illegible]	1,[illegible].50

People's Counsel Exhibit No. ___
Sheet #5

UNITED RAILWAYS AND ELECTRIC COMPANY

Additions to and Deductions from Fixed Capital by Jobs for the Year 1924.

Authority No.	Explanation of Work.		Charged Fixed Capital.
	Engineering Department (Cont'd).		
	Mayor and City Council - Franchise Charges - (Cont'd).		
56-21	Pratt St. - E. Park Ave and Arm Wolfe and Pratt Pratt Street and E. Park Ave.	Ord. No. 934	1,112.00
62-22	N. E. Cor. Eastern Ave and Broadway Curves	Ord. No. 938	273.00
	Total Franchise Charges		2,028.00
	Mayor and City Council - Paving Charges.		
108-22	Wolfe Street - Pratt to Baltimore - Curves at Baltimore and Pratt		640.78
109-22	Arm Street - Thomas Street to Eastern Avenue Curves at Aliceanna St and Eastern Ave.		844.03
97-23	Saratoga Street - Curves at Schroeder Street		366.29
98-23	Washington Street - Crossing at Federal and Curve at Preston Street		2,203.00
	Total Paving Charges		4,054.11

People's Counsel Exhibit No. _____

Sheet #6

UNITED RAILWAYS AND ELECTRIC COMPANY

Additions to and Deductions from Fixed Capital by Jobs for the Year 1924.

January 1 to December 31, 1924.

Authority No.	Explanation of Work.	Total Charges.	Charged Fixed Capital.
	Rolling Stock & Shops Department.		
97-23	9 Extra Armatures for use in maintenance of motors	443.10	443.10
67-22	Window Screens for 392 Semi-Convert. Cars	8,257.94	8,257.94
103-23	Steel Wheels (264 Semi-Convert. Cars)	16,461.57	16,461.57
103-23	Bumper Shields (499 Cars)	6,562.71	6,562.71
135-23	(1) 16" Flater Lathe 1 No. 2 Barnes 20" x 36" Screw Press 1 East Milling Machine 1 Worcester Drill Grinder	99.60	99.60
45-23	(1) Electric Welding Set	206.40	206.40
10-24	(90) Q.P. Trolley Catchers and Equip. 45 Harford Ave. Line with Same.	891.83	891.83
76-24	Comfort Station Monument and 11th Sts. Waiting Station	531.59	531.59
130-24	Birney Car Treadle Device	1,047.31	1,047.31
72-23	(2) Peter Witt. Cars	34,569.84	34,569.84
135-24	Hunter Sign Curtains (72) for Preston St. Line	665.28	665.28
140-24	Owings Mills Car House (Lavatory and Wash Basin)	84.96	84.96
151-24	Oreola Heater, Flat Car Quarters - Carroll Park Shops	200.00	200.00
154-24	(6) West. 101-B Motors (S.H.)	2,295.00	2,295.00
15-24	Trackless Trolley Busses- Additional Parts	486.86	486.86
		74,804.07	74,804.07
95-22) 30-23)	Charles St. Garage (Adjustment of 1923 Accounting)	(3,251.88 Red Figures	3,251.88
	Total	71,552.19	71,552.19
	Equipment Acquired from Maryland Electric Railways Co.		
	85 Cars	484,385.55	484,385.55
	120 Heater Equipments	5,460.00	5,460.00
	Total Additions	489,845.55	489,845.55
	Fenders for 85 Cars Retired	(680.00 Red Figures	680.00
	Total Equipment acquired from Md. Elec. Rys.	489,165.55	489,165.55
	Grand Total Rolling Stock & Shops Department	560,717.74	560,717.74

UNITED RAILWAYS AND ELECTRIC COMPANY

Additions to and Deductions from Fixed Capital by Jobs for the Year 1924.

January 1 to December 31, 1924.

Explanation of Work	Total Charges	Charged Fixed Capital.
Power Department		
Motor Trucks (15)	2,810.92	2,810.92
Dictaphone (1)	190.00	190.00
Renew (75) Wooden Poles, Edmondson Ave, Falls Road and Elec. Park sections	2,888.63	2,888.63
Flexible Brackets, Fulton Ave, between Baker and Lanvale	1,[illegible]1.53	1,[illegible]1.53
25 Concrete Poles	1,718.01	1,718.01
Renew 50 Wooden Poles West Edmondson Ave section	2,243.33	2,243.33
25 Concrete Poles	1,978.76	1,978.76
Belvedere Ave. and W. Md. Ry. Co, Crossing Protection	2,976.16	2,976.16
Cheatam Switch (Park Terminal C.R.)	523.88	523.88
Cable Return Northern Sub- tation for Area of Greenmount Ave. and 20th st.	2,179.54	2,179.54
Renewing Trolley Wire (1924)	40,052.12	40,052.12
Caroline Street Trouble Station	8,369.06	8,369.06
Underground Cable Northern Sub- tation (12,300 ft.)	20,915.73	20,915.73
Flexible Brackets	342.42	342.42
Northern Sub-station Feeder Buses, etc.,	1,255.57	1,255.57
1 Portable Oil Purifier (West El. & M. Co.)	1,212.97	1,212.97
50 Concrete Poles (various)	1,330.46	1,330.46
Trackless Trolley Construction Sub Surface drain Highland Garage	714.64	714.64
Total Power Department	92,914.53	92,914.53
Miscellaneous.		
1 U. S. N. Paymaster chest 36,650 Claim Dept.	350.00	350.00
1 " " " 36,662 Treas'r Office.	350.00	350.00
Total Miscellaneous	700.00	700.00

People's Counsel Exhibit No.

Sheet #8

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Statement of Additions to and Retirements from Fixed Capital in Connection With Track Betterments and Reconstruction for the Year 1924.

Authority No.	Net Cost of Job	Salvage	Total Charged to Fixed Capital.	Estimated Original Cost of Property Replaced (Charged to Depreciation Reserve)	No Fi
122 - 23	119,805.41	3,983.32	123,788.73	65,095.02	
123 - 23	2,741.72	149.10	2,890.82	1,738.66	
131 - 23	9,146.74	243.04	9,389.78	4,913.87	
134 - 23	6,650.12	190.56	6,840.68	3,494.17	
8 - 24	25,971.63	913.71	26,885.34	13,009.01	
9 - 24	2,055.94	47.14	2,103.08	1,242.05	
19 - 24	1,759.59	62.40	1,821.99	924.36	
20 - 24	1,211.37	46.88	1,258.25	621.99	
21 - 24	4,314.36	86.83	4,401.19	2,164.12	
22 - 24	2,611.83	128.57	2,740.40	1,364.97	
24 - 24	66,233.72	1,784.85	68,018.57	33,507.05	
29 - 24	86,984.58	2,609.31	89,593.89	46,493.44	
31 - 24	5,835.57	192.56	6,028.13	3,636.16	
35 - 24	2,320.60	90.00	2,410.60	1,217.80	
36 - 24	11,068.70	309.14	11,377.84	5,528.95	
41 - 24	1,430.49	54.63	1,485.12	714.35	
43 - 24	14,026.13	331.99	14,358.12	7,185.23	
45 - 24	4,212.18	129.64	4,341.82	2,180.95	
49 - 24	1,696.75	54.06	1,750.81	794.67	
50 - 24	15,953.27	468.00	16,421.27	8,422.95	
69 - 24	2,070.70	58.93	2,129.63	1,044.85	
70 - 24	78,947.94	2,004.70	80,952.64	39,844.71	
71 - 24	9,213.51	297.79	9,511.30	4,684.89	
72 - 24	9,343.64	250.37	9,594.01	5,033.87	
75 - 24	4,702.55	169.36	4,871.91	2,573.40	
81 - 24	14,157.13	431.04	14,588.17	7,961.89	
83 - 24	5,391.53	115.42	5,506.95	2,627.78	
84 - 24	18,224.11	540.88	18,764.99	9,512.94	
85 - 24	32,115.26	934.55	33,049.81	16,548.80	
86 - 24	3,559.74	95.64	3,655.38	1,422.95	
91 - 24	43,769.77	1,842.70	45,612.47	21,725.49	
96 - 24	10,291.99	643.58	10,935.57	5,760.67	
100 - 24	28,876.15	830.39	29,706.54	15,572.84	
101 - 24	2,615.90	79.95	2,695.85	1,443.04	
111 - 24	1,102.94	49.95	1,152.89	605.50	
112 - 24	2,189.59	76.65	2,266.24	1,173.90	
118 - 24	3,373.27	2.17	3,375.44	1,696.98	
~~119 - 24~~	6,324.61	198.48	6,523.09	3,337.15	
TOTALS	642,301.03	20,498.28	662,799.31	346,821.04	

People's Counsel Exhibit No._____

Sheet #8

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Statement of Additions to and Retirements from Fixed Capital in Connection With Track Betterments and Reconstruction for the Year 1924.

Net Cost of Job	Salvage	Total Charged to Fixed Capital.	Estimated Original Cost of Property Replaced (Charged to Depreciation Reserve)	Net Charge to Fixed Capital
119,805.41	3,983.32	123,788.73	65,095.02	58,693.71
2,741.72	149.10	2,890.82	1,738.66	1,152.16
9,146.74	243.04	9,389.78	4,913.57	4,476.21
6,650.12	190.56	6,840.68	3,494.17	3,346.51
25,971.63	913.71	26,885.34	13,009.01	13,876.33
2,055.94	47.14	2,103.08	1,242.05	861.03
1,759.59	62.40	1,821.99	924.36	897.63
1,211.37	46.88	1,258.25	621.99	636.26
4,314.36	86.83	4,401.19	2,164.12	2,237.07
2,611.83	128.57	2,740.40	1,364.97	1,375.43
66,233.72	1,784.85	68,018.57	33,507.05	34,511.52
86,984.58	2,609.31	89,593.89	46,493.44	43,100.45
5,835.57	192.56	6,028.13	3,636.16	2,391.97
2,320.60	90.00	2,410.60	1,217.80	1,192.80
11,068.70	309.14	11,377.84	5,628.95	5,848.89
1,430.49	54.63	1,485.12	714.35	770.77
14,026.13	331.99	14,358.12	7,185.23	7,172.89
4,212.18	129.64	4,341.82	2,180.95	2,160.87
1,696.75	54.06	1,750.81	794.67	956.14
15,963.27	458.00	16,421.27	8,422.95	7,998.32
2,070.70	58.93	2,129.63	1,044.85	1,084.78
78,947.94	2,004.70	80,952.64	39,844.71	41,107.93
9,213.51	297.79	9,511.30	4,684.89	4,826.41
9,343.64	250.37	9,594.01	5,033.87	4,560.14
4,702.58	169.36	4,871.91	2,573.40	2,298.51
14,157.13	431.04	14,588.17	7,961.89	6,626.28
5,391.53	115.42	5,506.95	2,627.78	2,879.17
18,224.11	540.88	18,764.99	9,512.94	9,252.05
32,115.26	934.55	33,049.81	16,548.80	16,501.01
3,559.74	95.64	3,655.38	1,422.95	2,232.43
43,769.77	1,842.70	45,612.47	21,725.49	23,886.98
10,291.99	643.58	10,935.57	5,760.67	5,174.90
28,876.15	830.39	29,706.54	15,572.84	14,133.70
2,615.90	79.95	2,695.85	1,443.04	1,252.81
1,102.94	49.95	1,152.89	605.50	547.39
2,189.59	76.65	2,266.24	1,173.90	1,092.34
3,373.27	2.17	3,375.44	1,696.92	1,678.52
6,324.61	198.48	6,523.09	3,337.13	3,185.96
642,301.03	20,498.28	662,799.31	345,821.04	336,978.27

People's Counsel Exhibit No. ____

Sheet #9

MARYLAND ELECTRIC RAILWAYS COMPANY

Investment in Road and Equipment Year 1924.

Authority No.	Explanation of Work.	Charged Fixed Capital.
	Organization	72,790.84
	50 Cars U. S. Ship. Bd. E. F. Corp.	* 508,000.00
119-22, 107-23	Montebello Avenue Exten.	* 50,746.34
	Guilford Avenue Sub-Station	109,419.66
	Gay Street Sub-Station	120,425.18
	Tyson Street " "	110,168.81
	Caroline Street" "	108,090.34
	Purchase Balto. & Belair E. R. R. Co.	75,037.50
33-24	Block Signal " " "	4,526.32
89-24	Reconst. overhead " " "	4,910.17
	10 Cars U.S. Housing Corp.	* 87,500.00
93-24	Extension S.B. Track and new siding Balto. & Belair E. R.R.	3,918.97
103-24	Loading Platforms B. & B. E.R.R.	2,864.13
	Baltimore, Sparrows Point and Chesapeake Bay Railway and Baltimore, Halethorpe and Elk Ridge Railway items prior to Consolidation	2,045.19
	Total	1,268,443.45

* Included in Valuation December 31, 1923.

People's Counsel Exhibit 1

Sheet #10

MARYLAND ELECTRIC RAILWAYS COMPANY

Special 7½% Sinking Fund Property

Fixed Capital Installed 1924.

		Fixed Capital.
31-43	Roland Park Car House - Open Storage	3,497.38
	Columbia Avenue Extension	1,928.00
48-23 A-B	Belair Road Loop	8,210.74
48-23 C	" " " (Service Bldgs.)	7,059.40
80-24	Loop Track Edmondson Ave Car House	8,543.80
	Total	29,239.32

People's Counsel Exhibit No.

Sheet #11

FOLD OUT IS TOO LARGE TO BE FILMED

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

RETIREMENTS OF FIXED CAPITAL AT DEPRECIATED VALUATION AMOUNTS FOR THE YEARS 1924, 1925 AND 1926.

		1924		1925		
	Per Cent Condition	Retirements as Shown in Company's Exhibit #23	Depreciated Value	Retirements as Shown in Company's Exhibit #23	Depreciated Value	Retirement as Shown i Company's Exhibit #2
Tracks	80	561,100	448,880	497,000	397,600	502,500
Paving	80	158,000	126,400	142,000	113,600	59,700
Bridges	82	-	-	12,200	10,004	-
Signals & Interlocking	95	11,000	10,450	-	-	1,600
Poles & Fixtures	90	1,100	990	14,100	12,690	26,200
Underground Conduits	95	300	285	400	380	1,300
Distribution System	88	69,600	52,448	158,240	139,251	148,040
Pass. & Combination Cars	85	-	-	46,000	39,100	46,000
Elec. Engine of Cars	85	-	-	168,100	142,885	168,100
Power Plant Equipment	70	100	70	4,200	2,940	-
Transmission System	90	-	-	36,000	32,400	9,500
Sundry Items	*85	11,571	9,835	7,325	6,226	7,010
TOTAL		802,771	649,356	1,085,565	897,076	969,950

Peoples Counsel Exhibit No.

Sheet #12

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE.

Summarization of Additions and Retirements of Fixed Capital for the Year 1925.

	TOTAL	IN VALUATION	NOT IN VALUATION
Additions			
United Railways & Electric Company			
Engineering Department - Regular	38,760.47		38,760.47
Track Reconstruction	745,443.11		745,443.11
Rolling Stock and Shops Department	132,272.06		132,272.06
Power Department	42,516.13		42,516.13
Miscellaneous	4,734.66		4,734.66
Maryland Electric Railways Company			
Road and Equipment Account	131,556.66		131,556.66
Special Sinking Fund Account	27,230.00	27,080*	150.00
Depreciation Fund Account	44,527.03		44,527.03
TOTAL ADDITIONS	1,167,040.12	27,080.	1,139,960.12

Transferred from United Rys. & Elec. Co.

	BOOK FIGURES.	VALUATION FIGURES.
Retirements		
United Railways & Electric Company		
Prior to June 30, 1914	45,231.29	
Since June 30, 1914	57,276.00	1,139,157.00*
Track Reconstruction	373,929.44	
Maryland Electric Railways Company	1,500.00	
TOTAL RETIREMENTS	477,936.73	1,139,157.00
NET ADDITIONS	689,101.39	

Depreciated Valuation Amounts (Sheet No.)	897,076.00
Add Overheads in Valuation (22.3% of Cost to Reproduce New)	242,081.00
Net Retirements at depreciated valuation figures	1,139,157.00

People's Counsel Exhibit No. _____

Sheet #13

UNITED RAILWAYS AND ELECTRIC COMPANY

Additions to and Deductions from Fixed Capital by Jobs for the Year 1925.

	Explanation of Work.	Charged to Fixed Capital.
	Engineering Department.	
	Storage Tracks - Carroll Park	1,061.15
	Loop Track, Edmondson Ave Car House	19.79
	Madison Ave. and Whitelock Sts.	228.07
	Roland Ave and 40th St. (Crossover)	(75.32) Red Figure
	Automatic Switches	277.54
	Sand Drying Plant Col. Ave. Screens and Chutes	1,126.44
	Belvedere Ave, South of Groveland Ave.	722.89
	Landing Platforms on #32 Line	751.05
	Hanover St. Bridge (Approaches)	5,768.49
	Balto. and Holliday Sts. (Curve)	4,735.87
	Harford Road N. of North Ave.	2,608.68
	Collins Ave. - Paving	1,491.02
	Additional Room Dept. of Work Cars - Col. Ave.	895.78
	Roland Ave. S. of Belvedere Ave.	951.92
	Westport Line R. of Way	4,421.39
	Wash. Boulevard near Mount St. (Sidewalk)	267.01
	Belvedere Ave. - R. of Way	1,100.00
(1)	Dynamotor Complete	3,012.73
(1)	Electric Air Compressor	4,878.37
(1)	Ford Truck - 1 Ton	623.55
	Eastern Ave and 134th St. Sidewalk	87.51
	Guyon Oak Property Release	2,000.00
	Park Heights Ave. S. of Slade Ave.	1,086.06
	Harford Road S. of Ardman Ave	1,044.91
	Total	38,760.47

People's Counsel Exhibit No. ____

Sheet #14

UNITED RAILWAYS AND ELECTRIC COMPANY

Additions to and Deductions from Fixed Capital by Jobs for the Year 1925.

Authority No.	Explanation of Work.	Charged to Fixed Capital.
	Rolling Stock and Shops Department	
103-25	Bumper Shields (499 Cars)	1,566.78
143-25	Converting Cars (26 Cars)	46,987.20
108-24	Birney Car Treadle Device	228.90
133-24	Hunter Sign Curtains (72)	15.76
148-24	Owings Mills C.H. (Lavatory etc.)	370.32
4-24	New Brown Hoist (1)	20,150.55
143-24	Window Screens (36 Cars)	1,604.48
149-24	Charles Sts. Garage (Water Supply)	2,127.03
151-24	Flat Car Quarters (Arcola Heater)	482.66
3-25	Flexible Route Nos. (160 Cars)	15,208.63
4-25	Carroll Park Shops, Additional Feeder	499.05
2-25	" (6) Time Clocks	3,111.91
33-25	" Enlarge Office	529.35
46-25	" Tools (second hand)	4,284.14
44-25	Ceiling Clips (all Cars)	1,[illegible].06
50-25	Chaining WD Wheel Guards	2,464.97
58-25	Pusher Car for Lombard and 8th Sts. C.H.	4,736.33
63-25	Madison Ave. C.H. Oil House etc.	2,[illegible].42
56-25	Window Screens (16) Safety Cars	718.00
77-25	Electric Heaters (38) Snow Sweepers etc.	4,[illegible].89
92-25	" " (3) Shop Supply Cars	917.65
8-25	Storm Equip. (1) Baker Plow and Magneto	866.35
14-25	" " Wing Handling Apparatus etc.	16,858.55
	Total Rolling Stock and Shops Department	132,272.06

People's Counsel Exhibit No. ____

Sheet #15

UNITED RAILWAYS AND ELECTRIC COMPANY

Additions to and Deductions from Fixed Capital by Jobs for the Year 1925.

Authority No.	Explanation of Work.	Charged to Fixed Capital.
	Power Department.	
60-25	Penna. Ave. Trouble Station	565.98
25-24	Belvedere Ave. and W. Md. Ry. Co.	1,458.22
76-24	Caroline St. Trouble Station	2,058.34
114-24	Flexible Brackets	2,252.06
115-24	Underground Cable, Northern Sub-Station	(322.19) Rd
149-24	Feeder Duc "	84.40
150-24	Concrete Poles (50)	1,257.92
0-25	New Trolley Wire- 1925	30,718.22
26-25	Trolley Guards (Extended)	4,442.30
	Total Power Dept.	42,816.13
	Miscellaneous	
24-25	1 Ford Coupe	603.00
"	1 " Sedan	664.00
"	1 Willys Knight Touring Car	400.00
"	1 Addressograph Equipment	3,066.66
	Total Miscellaneous	4,734.66

People's Counsel Exhibit No.___

Sheet #16

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Statement of Additions to and Retirements from Fixed Capital in Connection with Track Betterments and Reconstruction for the Year 1925.

Authority No.	Net Cost of Job	Salvage	Total Charged to Fixed Capital.	Estimated original Cost of Property Replaced (Charged to Depreciation Reserve)	Net
94 - 24	72,252.62	1,933.23	74,185.85	37,37[illegible].74	3
96 - 24	80,095.31	2,320.54	82,415.85	39,4[illegible].83	4
97 - 24	67,998.96	1,952.81	69,951.77	35,1[illegible].90	2
92 - 24	26,988.74	676.79	27,665.53	14,13[illegible].32	1
138 - 24	8,411.44	185.09	8,596.53	4,6[illegible].45	
139 - 24	1,983.69	58.77	2,042.46	1,127.02	
140 - 24	45,470.13	1,149.99	46,620.12	23,7[illegible].10	2
144 - 24	5,474.08	107.91	5,581.99	2,9[illegible].47	
157 - 24	1,682.41	98.21	1,780.62	8[illegible].08	
155 - 24	4,858.11	80.79	4,938.90	2,27[illegible].66	
20 - 25	49,233.48	1,639.72	50,873.20	27,579.02	2
25 - 25	3,209.71	97.36	3,307.07	1,576.37	
28 - 25	1,188.20	47.14	1,235.34	61[illegible].80	
29 - 25	2,519.11	126.87	2,645.98	1,310.82	
30 - 25	1,556.19	56.61	1,612.80	80[illegible].14	
31 - 25	1,622.77	41.77	1,664.54	83[illegible].28	
35 - 25	39,144.26	3,474.62	42,618.88	22,8[illegible].23	1
13 - 25	8,575.10	117.14	8,692.24	4,775.58	
39 - 25	42,113.42	1,570.15	43,683.57	17,0[illegible].03	2
40 - 25	26,285.82	2,619.31	28,905.13	16,1[illegible].92	1
41 - 25	3,255.78	132.59	3,388.37	1,68[illegible].63	
42 - 25	18,796.25	1,686.76	20,483.01	1[illegible],08[illegible].10	
43 - 25	2,472.94	52.25	2,525.19	1,441.99	
51 - 25	34,477.76	1,692.09	36,169.85	16,331.27	1
58 - 25	4,524.50	254.61	4,779.11	2,507.38	
59 - 25	27,270.46	2,009.75	29,280.21	15,171.54	1
60 - 25	14,988.22	163.05	15,151.27	6,608.77	
61 - 25	10,704.54	264.71	10,969.25	6,36[illegible].64	
62 - 25	22,894.44	1,045.62	23,940.06	10,46[illegible].96	1
66 - 25	2,389.65	118.80	2,508.45	1,114.66	
75 - 25	1,752.17	40.05	1,792.22	847.59	
74 - 25	1,971.43	69.02	2,040.45	987.50	
81 - 25	2,618.96	152.05	2,771.01	1,385.85	
82 - 25	1,185.88	66.89	1,250.77	531.17	
85 - 25	11,266.94	894.89	12,161.83	6,502.41	
82 - 24	27,856.38	1,297.66	29,154.04	12,425.54	1
86 - 25	36,674.34	1,385.31	38,059.65	19,328.68	1
TOTALS	715,762.19	29,680.92	745,443.11	373,929.44	37

People's Counsel Exhibit No._____

Sheet #16

THE [illegible] RAILWAY [illegible] COMPANY OF BALTIMORE

Statement of Additions to and Retirements from Fixed Capital in Connection with Track Betterments and Reconstruction for the Year 1923.

Net Cost of Job	Salvage	Total Charged to Fixed Capital.	Estimated Original Cost of Property Replaced (Charged to Depreciation Reserve)	Net Charged to Fixed Capital
72,252.62	1,933.23	74,185.85	37,372.74	36,813.11
80,095.31	2,320.54	82,415.85	39,446.83	42,969.02
67,998.96	1,952.81	69,951.77	35,[illegible].90	34,805.87
26,988.74	676.79	27,665.53	14,136.32	13,529.21
8,411.44	185.09	8,596.53	4,603.45	3,993.08
1,983.69	58.77	2,042.46	1,127.02	915.44
45,470.13	1,149.99	46,620.12	23,721.10	22,899.02
5,474.08	107.91	5,581.99	2,900.47	2,681.52
1,682.41	98.21	1,780.62	887.08	893.54
4,858.11	80.79	4,938.90	2,270.66	2,668.24
49,233.48	1,639.72	50,873.20	27,579.02	23,294.18
3,209.71	97.36	3,307.07	1,576.37	1,730.70
1,188.20	47.14	1,235.34	615.80	619.54
2,519.11	126.87	2,645.98	1,310.82	1,335.16
1,556.19	56.61	1,612.80	800.14	812.66
1,622.77	41.77	1,664.54	830.28	834.25
39,144.26	3,474.62	42,618.88	22,899.23	19,719.65
8,575.10	117.14	8,692.24	4,775.58	3,916.66
42,113.42	1,570.15	43,683.57	17,[illegible].03	26,652.54
26,285.82	2,619.31	28,905.13	16,113.92	12,791.21
3,255.78	132.59	3,388.37	1,680.63	1,707.74
15,796.25	1,686.76	20,483.01	15,083.10	5,399.91
2,472.94	52.25	2,525.19	1,441.99	1,083.20
34,477.76	1,692.09	36,169.85	19,331.27	16,838.58
4,524.50	254.61	4,779.11	2,507.38	2,271.73
27,270.46	2,009.75	29,280.21	15,171.54	14,108.67
14,988.22	163.05	15,151.27	6,608.77	8,542.50
10,704.54	264.71	10,969.25	6,366.64	4,602.61
22,894.44	1,045.62	23,940.06	10,468.98	13,471.10
2,389.65	118.80	2,508.45	1,114.66	1,393.79
1,752.17	40.05	1,792.22	847.59	944.63
1,971.43	69.02	2,040.45	987.50	1,052.95
2,618.96	152.05	2,771.01	1,385.85	1,385.16
1,183.88	66.89	1,250.77	531.17	719.60
11,266.94	894.89	12,161.83	6,502.41	5,659.42
27,856.38	1,297.66	29,154.04	12,425.54	16,728.50
36,674.34	1,385.31	38,059.65	19,328.68	18,730.97
715,762.19	29,680.92	745,443.11	373,929.44	371,513.67

People's Counsel Exhibit No. _____

Sheet #17

MARYLAND ELECTRIC RAILWAYS COMPANY

Investment in Road and Equipment Year 1925.

Authority No.	Explanation of Work.	Charged Fixed Capital.
	Guilford Ave - Auto. Sub-Station	56,475.39
	Gay Street - " "	22,433.40
	Tyson Street - " "	22,237.02
	Caroline Street - " "	26,188.34
76-25	Additional R/W Sp. Pt. Line	2,364.00
9-25	" Feeder the Carney Line	1,858.51
	Total Year 1925	131,556.66

People's Counsel Exhibit No. _____

Sheet #18

MARYLAND ELECTRIC RAILWAYS COMPANY

Investment in Fixed Capital Year 1925.

Special Sinking Fund Property.

Authority No.	Location.	Amount.
31-23	Roland Park Car House - Open Storage	50.00
48-23	Belair Road Loop	50.00
80-24	Loop Track Edmondson Ave. Car House	50.00
	Belvedere Ave. Sub-Station	27,080.00
	Total	27,230.00

Series A Depreciation Fund Property

47-24	W. Baltimore Street Loop	34,908.93
	Harford Road Loop, Inglewood Ave.	9,618.10
	Total	44,527.03

People's Counsel Exhibit No.____

Sheet #19

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Summarization of Additions and Retirements of Fixed Capital for the Year 1926.

	TOTAL	IN VALUATION	NOT IN VALUATION
Additions			
United Railways & Electric Company			
Engineering Department - Regular	29,326.46		29,326.46
Track Reconstruction	494,518.13		494,518.13
Rolling Stock and Shops Department - Regular	4,411.60		4,411.60
Md. Elec. Cars	764,756.34	764,756.34	
Power Department	43,108.69		43,108.69
Miscellaneous	9,137.22		9,137.22
Maryland Electric Railways Company			
Cars and Equipment Account	46,180.86		46,180.86
Special Sinking Fund Account			
Depreciation Fund Account	41,478.45	(A)15,378.36	26,100.09
TOTAL ADDITIONS	1,432,916.77	780,134.70	652,983.07

	BOOK FIGURES	VALUATION FIGURES
Retirements		
United Railways and Electric Company		
Prior to June 30, 1924	1,079,032.56)	
Since June 30, 1924	111,646.91)	1,019,163.00*
Track Reconstruction	223,145.79)	
Funders on Maryland Elec. Rys. Cars	560.00)	
Maryland Electric Railways Company		
Cars and Cars	699,279.81	
TOTAL RETIREMENTS	2,113,665.07	1,019,163.00
NET ADDITIONS	(680,958.30) Red Figures	

* Depreciated Valuation Amounts (Sheet No.) 802,864.00
Add Overheads in Valuation (22.3% of Cost to Reproduce New) 216,299.00
Net Retirements at Depreciated Valuation figures 1,019,163.00

(A) Transferred from United Railways Company

PEOPLE'S COUNSEL EXHIBIT NO

Sheet #20

UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Fixed Capital Installed during the Year 1926

Authority No.	Explanation of Work	Charged Fixed Capital
	Engineering Department	
-	Belvedere Ave.	600.00
1-26	Lakeside Line Guard Rail	2,165.02
28-26	Washington Boulevard - Sidewalk	16.20
90-26	Fayette St. and Patterson Park Ave.	1,830.10
91-26	Fairmount Ave. and Patterson Park Ave.	3,096.09
92-26	Lanvale and Gilmor Sts.	4,441.02
101-26	First & Tunis Sts. - Elec. Switch	558.04
105-26	Mt. Washington Viaduct	10,532.93
106-26	Preston St. W. of Careline St.	1,975.65
40-26	E. Preston St. Car House	4,111.41
	Total, Engineering Dept.	29,326.46

UNITED RAIL[illegible] ELECTRIC COMPANY OF B[illegible]

Fixed Capital Installed during the Year 1926

Authority No.	Explanation of Work		
	Rolling Stock & Shops Department		
4-26	New Brown Hoist Car		
37-26	1 N. T. Flather Lathe		
74-26	4 Ford Chain Hoist & Trolleys		
77-26	1 - 20th Century Woodworker		
97-26	Penna. Car House Heating Plant		1,
100-26	1 Berlin Duplex Bending Machine		
103-26	1 New 30" Planer		
	Total		4,
	Equipment Transferred from Bd. Elec. Rys. Co.		
	100 Cars - (65 & 35)	90%	[illegible]
	Deferred Debit 10%		76,[illegible]
	Total Cost		764,[illegible]
	Less: Fenders written off to Dep.		580.00 764,
	Power Department		
-	Temporary Feeder, Liberty Heights Ave.		3,
114-24	Flexible Brackets		1,1
115-24	Underground Cable, Northern Substation		1,
158-24	50 Concrete Poles		
15-26	Inst. U. G. Cable Progress XIII		12,
16-26	do do do XIV		
68-26	New Trolley Wire 1926		13,0
72-26	Ridgely Street & B.&O.R.R. - Signals		0
	Total		43,1
	Miscellaneous		
41-26	1 Ford Tudor Sedan, Co.'s No. 102		6
45-26	3 Willys-Knight Sedans, Co.'s Nos.108,110,11[illegible]		4,3
46-26	1 Ford Sedan Co.'s No. 104		6
69-26	1 " Coupe " " 107		5
73-26	1 " Sedan " " 111		6
86-26	1 " Tudor Sedan Co.'s No. 114		5
87-26	5 Snow Plow Equip. for Buses		1,3
94-26	1 Ford Tudor Sedan Co.'s No.115		5
	Total		9,1

UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Fixed Capital Installed during the Year 1926

Explanation of Work		Charged Fixed Capital
Rolling Stock & Shops Department		
New Brown Hoist Car		938.62
1 S. W. Flather Lathe		959.20
4 Ford Chain Hoist & Trolleys		738.91
1 - 20th Century Woodworker		450.00
Penna. Car House Heating Plant		1,308.36
1 Berlin Duplex Bending Machine		321.92
1 New 30" Planer		.10
Total		4,411.60
Equipment Transferred from Bd. Elec. Rys. Co.		
100 Cars - (65 & 35) @ 90%	[illegible]	
Deferred Debit 10%	76,475.53	
Total Cost	764,755.31	
Less: Fenders written off to Dep.	550.00	764,205.31
Power Department		
Temporary Feeder, Liberty Heights Ave.		3,426.15
Flexible Brackets		1,154.69
Underground Cable, Northern Substation		1,424.16
50 Concrete Poles		996.97
Inst. U. G. Cable Progress XIII		12,413.00
do do do XIV		3,901.92
New Trolley Wire 1926		18,082.91
Ridgely Street & B.&O.R.R. - Signals		609.89
Total		43,109.69
Miscellaneous		
1 Ford Tudor Sedan, Co.'s No. 102		601.00
3 Willys-Knight Sedans, Co.'s Nos.108,110,11[illegible]		4,813.22
1 Ford Sedan Co.'s No. 104		601.00
1 " Coupe " " 107		581.00
1 " Sedan " " 111		601.00
1 " Tudor Sedan Co.'s No. 114		555.00
5 Snow Plow Equip. for Buses		1,330.00
1 Ford Tudor Sedan Co.'s No.115		555.00
Total		9,137.22

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Statement of Additions to and Retirements from Fixed Capital in Connection with Track Betterments and Reconstruction for the Year 1925.

Authority No.	Net Cost of Job	Salvage	Total Charged to Fixed Capital	Estimated Original Cost of Property Replaced (Charged to Depreciation Reserve)	Net Fix
53 - 25	34,088.69	1,288.07	35,316.76	18,355.62	16
94 - 25	6,880.90	209.00	7,089.90	3,669.42	3
73 - 25	47,769.61	1,641.78	49,411.39	18,459.17	30
80 - 25	2,722.57	116.06	2,838.63	1,393.87	1
90 - 25	33,036.37	1,669.12	34,705.49	15,899.70	18
88 - 25	2,738.06	20.36	2,758.42	1,822.66	
4 - 26	2,409.80	120.79	2,530.59	1,265.12	1
5 - 26	885.10	53.54	938.64	517.52	
6 - 26	4,774.03	174.27	4,948.30	2,436.74	2
7 - 26	1,446.18	84.21	1,530.39	765.24	
8 - 26	3,023.94	82.03	3,105.97	1,588.69	1
9 - 26	1,296.42	67.75	1,363.17	688.23	
10 - 26	3,452.56	122.26	3,574.82	1,622.30	1
11 - 26	8,096.33	263.13	8,359.46	4,299.50	4
17 - 26	23,634.99	1,112.11	24,747.10	9,898.52	14
18 - 26	4,569.27	107.27	4,676.54	2,364.82	2
21 - 26	2,391.93	84.85	2,476.78	1,306.22	1
22 - 26	4,354.95	144.56	4,499.51	2,194.68	2
23 - 26	3,347.45	125.76	3,474.21	1,691.80	1
29 - 26	26,117.52	950.46	27,067.98	13,108.90	13
33 - 26	4,898.24	41.97	4,940.21	2,961.09	1
34 - 26	13,706.89	662.91	14,369.80	6,414.10	7
35 - 26	10,139.73	60.26	10,199.99	5,697.40	4
36 - 26	31,119.74	1,654.45	32,774.19	13,660.94	15
43 - 26	12,663.10	128.99	12,792.09	7,518.74	5
48 - 26	2,735.90	133.53	2,869.43	1,427.51	1
49 - 26	2,412.61	92.86	2,505.47	1,227.35	1
50 - 26	2,032.79	86.38	2,119.17	1,048.36	1
53 - 26	7,008.79	192.55	7,201.34	3,483.89	3
56 - 26	4,962.65	179.76	5,142.41	4,049.14	1
59 - 26	4,205.00	136.83	4,341.83	2,190.89	2
61 - 26	5,721.45	500.91	6,222.36	3,126.25	3
63 - 26	6,224.81	149.98	6,374.79	3,121.98	3
66 - 26	2,703.14	115.16	2,818.30	1,499.78	1
79 - 26	8,687.20	449.80	9,137.00	4,346.28	4
67 - 25	130,562.69	4,533.01	135,095.70	67,943.37	67
TOTALS	466,820.40	17,497.73	484,318.13	233,145.79	251

People's Counsel Exhibit No._____

Sheet #22

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Statement of Additions to and Retirements from Fixed Capital in Connection with Track Betterments and Reconstruction for the Year 1925.

Net Cost of Job	Salvage	Total Charged to Fixed Capital	Estimated Original Cost of Property Replaced (Charged to Depreciation Reserve)	Net Charge to Fixed Capital
34,088.69	1,288.07	35,316.76	18,356.62	16,961.14
6,880.90	209.00	7,089.90	3,669.42	3,420.48
47,769.61	1,641.78	49,411.39	18,439.17	30,972.22
2,722.57	116.06	2,838.63	1,393.87	1,444.76
33,036.37	1,669.12	34,705.49	15,899.70	18,805.79
2,738.06	20.36	2,758.42	1,822.66	935.76
2,409.80	120.79	2,530.59	1,265.12	1,265.47
885.10	53.54	938.64	517.52	421.12
4,774.03	174.27	4,948.30	2,436.74	2,511.56
1,446.18	84.21	1,530.39	765.24	765.15
3,023.94	82.03	3,105.97	1,588.69	1,517.28
1,295.42	67.75	1,363.17	688.23	674.94
3,452.56	122.26	3,574.82	1,622.30	1,952.52
8,096.33	263.13	8,359.46	4,299.50	4,059.96
23,634.99	1,112.11	24,747.10	9,898.52	14,848.58
4,569.27	107.27	4,676.54	2,364.82	2,311.72
2,391.93	84.85	2,476.78	1,306.22	1,170.56
4,354.95	144.56	4,499.51	2,194.68	2,304.83
3,347.45	125.76	3,474.21	1,691.80	1,782.41
26,117.52	950.46	27,067.98	13,108.90	13,959.08
4,898.24	41.97	4,940.21	2,961.09	1,979.12
13,706.89	662.91	14,369.80	6,414.10	7,955.70
10,139.73	60.26	10,199.99	5,697.40	4,502.59
31,119.74	1,654.45	32,774.19	13,660.94	19,113.25
12,663.10	128.99	12,792.09	7,518.74	5,273.35
2,735.90	133.53	2,869.43	1,427.51	1,441.92
2,412.61	92.86	2,505.47	1,227.35	1,278.12
2,032.79	86.38	2,119.17	1,048.36	1,070.81
7,008.79	192.55	7,201.34	3,683.89	3,517.45
4,962.65	179.76	5,142.41	4,049.14	1,093.27
4,205.00	136.83	4,341.83	2,190.89	2,150.94
5,721.45	500.91	6,222.36	3,126.25	3,096.11
6,224.81	149.98	6,374.79	3,121.98	3,252.81
2,705.14	115.14	2,818.30	1,499.78	1,318.52
8,687.20	449.80	9,137.00	4,346.28	4,790.72
130,562.69	4,553.01	135,095.70	67,843.37	67,252.33
466,820.40	17,497.73	484,318.13	233,145.79	251,172.34

PEOPLE'S COUNSEL EXHIBIT NO.____

Sheet #23

MARYLAND ELECTRIC RAILWAY COMPANY

Investment in Road & Equipment, year 1926

Authority No.	Explanation of Work	Charged Fixed Capital
75-25	Additional R/W. Sparrows Pt. Line	54.36
3-26	New Siding Harford Road Line	3,677.63
25-26	" Waiting Station, Halethorpe Line	1,072.02
51-26	Additional Track, Monument St.	9,420.44
52-26	Southern Can Co. Extension	31,976.44
	Total year 1926	46,180.89

PEOPLE'S COUNSEL EXHIBIT NO._____

Sheet #24

MARYLAND ELECTRIC RAILWAY COMPANY

Investment in Fixed Capital Year 1926

Special Sinking Fund Property

Explanation	Amount
None	

SERIES A - DEPRECIATION FUND PROPERTY

Irvington Loop	41,478.45

People's Counsel Exhibit No. ___

Sheet #25

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Summarization of Additions and Retirements of Fixed Capital for the Year 1927.

	TOTAL	IN VALUATION	NOT IN VALUATION
Additions			
United Railways & Electric Company			
Engineering Department - Regular	38,378.39		38,378.39
Track Reconstruction	248,696.30		248,696.30
Rolling Stock and Shops Department	419,432.95		419,432.95
Power Department	17,234.94		17,234.94
Miscellaneous	12,817.66		12,817.66
Maryland Electric Railways Co.			
Road and Equipment Account	(17,269.56) Red Figures		20,522.02
Special Sinking Fund Account	37,791.58)		
TOTAL ADDITIONS	757,081.24		757,081.24

	BOOK FIGURES	VALUATION FIGURES
Retirements		
United Railways & Electric Company		
Prior to June 30, 1914	112,544.38)	
Since June 30, 1914	341,164.11)	1,[illegible],000.00*
Track Reconstruction	116,[illegible])	
TOTAL RETIREMENTS	574,[illegible]	1,[illegible]
NET ADDITIONS	180,[illegible]	

*Estimated

People's Counsel Exhibit No. _____

Sheet #26

UNITED RAILWAYS AND ELECTRIC COMPANY

Fixed Capital Installed during the Year 1927.

Authority No.	Explanation of Work.	Charged Fixed Capital.
	Engineering Department	
26-26	Wash. Boulevard - Putnam and Elk - Sidewalks	[illegible]
40-26	Eastern Ave and 8th St. - Car House- "	[illegible]
80-26	East Preston St. C.H. - Track Connections etc.	[illegible]
90-26	Fayette and P. Park Ave - Single T Curve	[illegible]
91-26	Fairmount and " " - "	([illegible]) Res.
92-26	Gilmor and Lanvale - Double T Curve	[illegible]
108-26	Mt. Wash. Viaduct - new double tracks	19,100.[illegible]
111-26	Roland Ave - Curve into R. Park waiting Sta.	[illegible]
107-26	Overlea Ave - Sidewalk	[illegible]
114-26	Preston St. - Spring St. - Elec. Switching Device	[illegible]
1-27	Dolphin and Argyle Ave - Lanvale and Myrtle Ave Curves	[illegible]
48-27	Monument St. E. of P. Pk. Ave - Crossover	[illegible]
56-27	Carroll Pk. Machine Shops - Concrete Pavement	[illegible]
68-27	Belvedere C. H. - Storage tracks Elec. Switch Device	[illegible]
71-27	Edmondson Ave and Walnut Sts. - Tracks to H. B. Jacobs Prop.	[illegible]
-	Hoffman and Potomac Sts. - Right of Way	[illegible]
86-25	Ordinance Obligations for Paving	[illegible]
56-27	Hercules Grinder	[illegible]
	Total	[illegible]

People's Counsel Exhibit No. _____
Sheet #27

UNITED RAILWAYS AND ELECTRIC COMPANY

Fixed Capital Installed during the Year 1927.

Authority No.	Explanation of Work.	Charged Fixed Capital.
	Rolling Stock and Shops Departments.	
103-26	30" Planer	1,879.61
104-26	50 - B-11 double Registers	3,741.69
106-26	1 No. 10 Dividing head for No. 3 Milling Machine	379.82
115-26	4 B-5 double Registers	515.04
8-27	Alterations to S. T. Brownell Car into Pusher Car	2,046.58
30-27	Carrollton Pk. Shops - Water Distilling Room	995.49
38-27	4 Extra G. E. - 275 Armatures	1,753.56
41-27	100 Minner Window Wipers	501.42
64-27	97 " " "	443.85
29-27	Equip. 10 Cars #5191 to #5200 Tomlinson Couplers	13,439.06
	Controls on 79 Cars	48,613.56
	Electrical Equip. 10 Cars	47,179.00
	" " 69 "	259,009.00
	" Freight	2,644.05
	Total Rolling Stock and Shops Department	419,432.93
	Power Department	
114-26	Flexible Bracket Const. 200 Poles Pikesville, Towson, etc.	550.66
96-26	Bear Creek Sub-Station - 600 Volt Resonant Shunt	393.69
15-26	Eastern Ave - U.G. Feeder Pro. #111	(55.41)
29-27	Renewal Trolley Wire - 1927	7,601.78
45-27	Install. U. G. Cables - Pro. #1	8,744.32
	Total Power Department	17,234.94

People's Counsel Exhibit No. _____

Sheet #28

UNITED RAILWAYS AND ELECTRIC COMPANY

Fixed Capital Installed During the Year 1927.

Authority No.	Explanation of Work.	Charged Fixed Capital.
	Miscellaneous.	
13-27	1 Ford Sedan (Shops Dept.)	555.00
23-27	1 " "	555.00
26-27	1 " 1 ton truck	728.80
38-27	1 Willys-Knight Sedan (B.C.Tompkins)	1,375.75
75-27	1 Model 626 Dodge Water Car (B.C.Park)	3,500.00
-27	Cost 60 Beacon Lights Belair Rd. & Erdman Ave.	6,103.11
	Total Miscellaneous	12,817.66

People's Counsel Exhibit No. _____
Sheet #29

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Statement of Additions to and Retirements from Fixed Capital in Connection With Track Betterments and Reconstruction for the Period Jan. 1, 1927 to August 31, 1927.

Authority No.	Net Cost of Job	Salvage	Total Charged to Fixed Capital.	Estimated Original Cost of Property Replaced (Charged to Depreciation Reserve)	Net Fixe
58 - 26	86,702.07	1,320.12	88,022.19	41,106.00	46
65 - 26	4,289.99	108.69	4,398.68	2,252.56	2
85 - 26	13,740.97	322.14	14,063.11	6,887.27	7
98 - 26	6,454.10	167.12	6,621.22	3,392.72	3
99 - 26	2,417.55	45.70	2,463.25	1,195.48	1
109 - 26	1,256.02	12.74	1,268.76	645.52	
110 - 26	10,577.53	249.97	10,827.50	5,379.68	5
44 - 26	19,610.99	827.47	20,438.46	8,861.76	11
4 - 27	26,406.96	2,299.47	28,705.43	11,719.82	16
6 - 27	3,923.93	93.62	4,017.55	1,968.96	2
7 - 27	912.58	43.98	956.56	440.61	
8 - 27	4,041.64	109.21	4,150.85	2,075.21	2
9 - 27	1,345.12	46.88	1,392.00	680.15	
10 - 27	1,544.53	62.28	1,606.81	1,532.82	
11 - 27	13,643.26	-	13,643.26	7,920.56	5
18 - 27	2,923.91	91.63	3,015.54	1,453.36	1
25 - 27	27,230.70	973.06	28,203.76	11,312.87	16
30 - 27	11,166.75	30.69	11,197.44	6,027.99	5
50 - 27	2,031.59	41.49	2,073.08	1,030.91	1
67 - 27	1,556.22	73.63	1,629.85	845.36	
TOTALS	241,775.41	6,919.89	248,695.30	116,728.28	131

People's Counsel Exhibit No. _____

Sheet #29

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Statement of Additions to and Retirements from Fixed Capital in Connection With Track Betterments and Reconstruction for the Period Jan. 1, 1927 to August 31, 1927.

Net Cost of Job	Salvage	Total Charged to Fixed Capital.	Estimated Original Cost of Property Replaced (Charged to Depreciation Reserve)	Net Charge to Fixed Capital
86,702.07	1,320.12	88,022.19	41,105.00	46,917.19
4,289.99	108.69	4,398.68	2,252.56	2,146.12
13,740.97	322.14	14,063.11	6,887.27	7,175.84
6,454.10	167.12	6,621.22	3,392.72	3,228.50
2,417.55	45.70	2,463.25	1,195.48	1,267.77
1,256.02	12.74	1,268.76	645.52	623.24
10,577.53	249.97	10,827.50	5,379.66	5,447.82
19,610.99	827.47	20,438.46	8,861.76	11,576.70
26,405.96	2,299.47	28,705.43	11,719.52	16,985.91
3,923.93	93.62	4,017.55	1,968.95	2,048.60
912.58	43.98	956.56	440.61	515.95
4,041.64	109.21	4,150.85	2,075.21	2,075.64
1,345.12	46.88	1,392.00	680.15	711.85
1,544.53	62.28	1,606.81	1,532.82	73.99
13,643.26	-	13,643.26	7,920.56	5,722.70
2,923.91	91.63	3,015.54	1,453.35	1,562.19
27,230.70	973.06	28,203.76	11,312.87	16,890.89
11,166.75	30.69	11,197.44	6,027.99	5,169.45
2,031.59	41.49	2,073.08	1,030.91	1,042.17
1,556.22	73.63	1,629.85	845.35	784.50
241,775.41	6,919.89	248,695.30	116,728.28	131,967.02

People's Counsel Exhibit No. _____

Sheet #30

MARYLAND ELECTRIC RAILWAYS COMPANY

Investment in Road and Equipment 8 Months 1927 to August 31,1927.

Explanation of Work	Charged Fixed Capital.
R/W Sp. Pt. Line near Dundalk	
R/W from Dundalk Co.	1,400.00
Md. Title Co. - Examination of Title	24.50
Reconstruction Lansdne Elec. Ry. Division Milldale to Lorraine Cemetery	12,865.68
S. T. Montebello Ave. N. Harford Road C.H.	576.80
Pur. of Lorraine Elec. Ry. Co.	32.90
Construction new D. F. on Preston St. from C.H. to Lonsys Lane and on Lonsys Lane from Preston to Biddle Street and on Biddle Street from Loney's Lane to a point near Southern Can Company's Buildings	5,815.14
Total Details	20,522.02
Southern Can Co. extension transferred to Depreciation Fund Property	(37,791.58) Ret 24
Net Deductions	(17,269.56) Ret 24

People's Counsel Exhibit No. _____

Sheet #31

MARYLAND ELECTRIC RAILWAY COMPANY

Investment in Fixed Capital for Eight Months ended August 31,1927.

Special Sinking Fund Property

Authority No.	Explanation	Amount
80-26	Southern Gas Company extension	
	(Transferred from R. & E. Account)	37,791.80

UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Improvements made on leased Property of the Maryland Electric Railways Company - January 1, 1924 to August 31,1927.

Authority No.	Explanation	Totals
	1924	
83-23	Track Betterment 15th St. between Lombard and Eastern Ave.	9,420.23
103-23	Equip. 110 Cars with Bumper Shields	265.60
11-24	" 55 " " rolled Steel Wheels	5,732.60
51-24	Additional Signal Protection Bay Shore Line	7,386.08
63-24	Incinerator for Bay Shore Park	1,365.16
64-24	Improvement to Bath House, Bay Shore Park	7,348.96
77-24	Replacement and Betterment Trolley Wire E.R. Line	1,228.52
113-24	Track Betterment in curve Eastern Ave. and Back River Neck Rd.	625.22
	Paving Sidewalk at Harford Rd. C. H. across track	68.57
	Credit of old Lighting Line removed between Bay Shore Power H. and Park	(3,646.35) AL
	Net for year 1924	
	1925	
103-23	Bumper Shields 110 Closed Cars	702.03
153-24	Apply Steel Wheels to 55 Cars of 110 Lot	5,323.97
49-25	Chain for Wheel Guards 170 Cars	240.55
45-25	Clips in ceiling of 170 Md. Electric Railway Cars	227.95
8-25	Renewal Trolley Wire Dundalk and cut off sections	2,519.28
14-25	High Level Storm Water Drain Bay Shore Park	1,424.17
17-25	Power Plant for Pumping wells Bay Shore Park	3,497.58
19-25	Addition to Bath House, Bay Shore Park	10,812.57
48-25	Guard Rails on Halethorpe Line (on 4 turnouts)	1,056.39
87-25	Crossover on E.R. Line just East of E.R. Waiting Sta.	1,517.37
69-25	2-3 Phase Ltng. Arresters and 2 K.V.A. Transf. E.R. Trans. Line	4,604.22
64-25	Connect Harford Rd. Car H. to new Sanitary Sewers	525.00
	Guilford Ave. Automatic Sub-Station	400.85
	Gay Street " " "	15.84
	Tyson Street " " "	15.84
	Caroline St. " " "	15.83
	Total for year 1925	
	Amount forward	

People's Counsel Exhibit No. _____

Sheet #32

UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Improvements made on leased Property of the Maryland Electric Railways Company - January 1, 1924 to August 31,1927.

No.	Explanation	Totals
	1924	
	Track Betterment 15th St. between Lombard and Eastern Ave.	9,420.23
	Equip. 110 Cars with Bumper Shields	264.60
	" 55 " " rolled Steel Wheels	5,732.80
	Additional Signal Protection Bay Shore Line	7,386.06
	Incinerator for Bay Shore Park	1,065.16
	Improvement to Bath House, Bay Shore Park	7,348.98
	Replacement and Betterment Trolley Wire B.P. Line	1,228.52
	Track Betterment in curve Eastern Ave. and Back River Neck Rd.	623.22
	Paving Sidewalk at Harford Rd. C. H. across track	68.87
	Credit of old Lighting Line removed between Bay Shore Power H. and Park	(3,646.35) real figure
	Net for year 1924	29,491.84
	1925	
	Bumper Shields 110 Closed Cars	702.03
	Apply Steel Wheels to 55 Cars of 110 Lot	5,323.97
	Chain for Wheel Guards 170 Cars	240.56
	Clips in ceiling of 170 Md. Electric Railway Cars	227.95
	Renewal Trolley Wire Dundalk and cut off sections	2,519.26
	High Level Storm Water drain Bay Shore Park	1,424.17
	Power Plant for Pumping wells Bay Shore Park	3,497.58
	Addition to Bath House, Bay Shore Park	10,812.57
	Guard Rails on Halethorpe Line (on 4 turnouts)	1,066.39
	Crossover on B.&O.Line just East of B.P. Waiting Sta.	1,517.37
	2-3 Phase Ltng. Arrestors and 2 K.V.A. Transf. B.&O. Trans. Line	4,604.22
	Connect Harford Rd. Car H. to new Sanitary Sewers	525.00
	Guilford Ave. Automatic Sub-Station	400.85
	Bay Street " " "	15.84
	Tyson Street " " "	15.84
	Caroline St. " " "	15.83
	Total for year 1925	32,979.44
	Amount forward	62,471.28

People's Counsel Exhibit No. _____

Sheet #55

UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Improvements made on leased Property of the Maryland Electric Railways Company - January 1, 1926 to August 31,1927.

Authority No.	Explanation	Totals
	1926	
183-26	Apply Steel Wheels to 55 Cars of 110 lot	304.68
69-25	2-S Phase Ltng. Arresters and 2 K.V.A. Transf. B.E. Trans. Line account Track Reconstruction	8.91
89-25	Special Work Lombard and 8th Sts.	2,206.95
33-26	B. T. Monument St. Loneys Lane to Highland Ave.	4,[illegible]6.99
64-26	Plain Curves at Balto. and 3rd Sts.	2,[illegible]04.32
47-26	B. T. Crossing Wash. Boulevard and W. Md. Railway Company	548.64
29-25	Enclose portion of "Shipyard" Shelter Sta. B.E. Line	887.26
81-26	Construct two (2) shower baths at Park Terminal G.H.	762.11
57-26	" shower bath Edmondson Ave Car House	272.09
70-26	Install Shower Bath Belvedere Ave Car House	225.00
76-26	" " " add hot water heater Roland Park Car House	307.00
60-26	Removal of Trolley wire Back River Line	482.94
	Total for year 1926	1[illegible]
	1927 (8 Months)	
69-25	2-S Phase Ltng. Arresters and 2 K.V.A. Transf. B. E. Trans. Line	472.06
20-27	Construct Sidewalk Belair Rd. at Gardenville Loop	383.57
28-27	Renewing Trolley Wire Middle River Line	3,722.67
-	Pav. Sidewalk (adjacent to Lombard St. and 8th St. Car House) (West side of 8th St. N. of Pratt St.)	110.22
-	Guilford Ave Automatic Sub-Station	3,963.33
-	Gay Street " " "	3,963.34
-	Tyson Street " " "	3,963.33
-	Caroline Street " " "	3,963.33
	Total for 8 Months (to August 31) 1927.	2[illegible]
	Grand Total period January 1, 1926 to August 31, 1927	9[illegible]

People's Counsel Exhibit No. _____

Sheet #35

UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Improvements made on leased Property of the Maryland Electric Railways Company - January 1, 1926 to August 31,1927.

Explanation	Totals	
1926		
Apply Steel Wheels to 58 Cars of 110 lot	304.68	
2-3 Phase Ltng. Arresters and 2 K.V.A. Transf. B. C. Trans. Line account Track Reconstruction	8.91	
Special Work Lombard and 8th Sts.	2,206.95	
S. T. Monument St. Loneys Lane to Highland Ave.	4,[illegible]6.99	
Plain Curves at Balto. and 3rd Sts.	2,[illegible]04.32	
D. T. Crossing Wash. Boulevard and W. Md. Railway Company	948.64	
Enclose portion of "Shipyard" Shelter Sta. C.P. Line	887.26	
Construct two (2) shower baths at Park Terminal C.H.	762.11	
" shower bath Edmondson Ave Car House	[illegible]72.89	
Install Shower Bath Belvedere Ave Car House	225.00	
" " " and hot water heater Roland Park Car House	307.00	
Renewal of Trolley wire Back River Line	[illegible]82.94	
Total for year 1926		13,545.31
1927 (8 Months)		
2-3 Phase Ltng. Arresters and 2 K.V.A. Transf. B. C. Trans. Line	472.04	
Construct Sidewalk Belair Rd. at Gardenville Loop	383.67	
Renewing Trolley Wire Middle River Line	3,729.67	
Pav. Sidewalk (adjacent to Lombard St. and 8th St. Car House) (West side of 8th St. N. of Pratt St.)	110.22	
Guilford Ave Automatic Sub-Station	3,963.33	
Gay Street " " "	3,963.34	
Tyson Street " " "	3,963.33	
Caroline Street " " "	3,963.33	
Total for 8 Months (to August 31) 1927.		20,548.83
Grand Total period January 1, 1926 to August 31, 1927		96,565.89

People's Counsel Exhibit +7

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE.

NET RETURN, AVERAGE RATE BASE AND PERCENTAGE OF RATE OF RETURN FOR THE YEARS 1924 to 1926, INCULSIVE.

	1924	1925	1926
Return Received as shown by Co. Exhibit No. 6C	4,124,580.58	4,279,060.09	4,314,015.91
Add Items deducted in Exhibit No. 6C, which are not deductable:			
1. Interest on Beth. Steel Co. Construction	3,124.68	3,124.68	3,308.28
2. Commissions for paying coupon interest	8,873.12	8,866.62	8,859.72
Corrected Return Received	4,136,578.38	4,291,051.39	4,326,183.91
Average Rate Base (Less Easements)	70,245,986.85	70,728,660.28	70,759,711.64
Rate of Return (Less Easements)	5.89%	6.07%	6.11%
Rate of Return on Total Valuation of $75,000,000	5.52%	5.72%	5.77%

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

AND

THE MARYLAND ELECTRIC RAILWAYS COMPANY

Investment in Road and Equipment as Shown by Books as of December 31, 1923 and Net Additions thereto for the Years 1924, 1925, 1926, and Eight Months to August 31, 1927.

Account No.	Account Name	Investment in Road & Equipment as of December 31, 1923.		1924		1925		1926		Eight Months to August 31, 1927	
		United Rys. & Electric Co.	Md. Elec. Rys. Co.	United Rys. & Electric Co.	Md. Elec. Rys. Co.	United Rys. & Electric Co.	Md. Elec. Rys. Co.	United Rys. & Electric Co.	Md. Elec. Rys. Co.	United Rys. & Electric Co.	Md. Elec. Rys. Co.
	Investment as of June 30, 1914	69,963,603.75	5,681,628.65	100,865.66	-	45,231.89	1,800.00	1,079,052.86	1,000.00	-	-
	I. Way and Structures.										
801	Engineering & Superintendence	124,863.78	13,756.63	11,867.80	15,802.88	14,584.25	2,212.89	10,162.76	1,441.33	898.89	272.83
802	Right of Way	33,407.34	3,312.55	-	-	5,521.39	2,364.00	600.00	34.35	83.10	1,434.80
805	Other land used in elec. railway operations	17,194.07	84,084.28	-	47,673.04	2,040.00	25,542.60	-	26,100.09	-	-
806	Grading	421,422.27	69,813.82	41,217.52	4,656.67	51,089.20	2,724.45	30,260.96	5,406.91	492.95	598.63
808	Ballast	375,844.82	28,413.56	9,406.82	4,185.07	40,931.71	866.89	29,342.48	3,941.06	21,752.89	1,949.25
806	Ties	93,240.52	34,778.18	12,946.91	2,446.44	14,334.06	611.00	14,507.76	4,865.18	3,284.97	35.12
807	Rails, rail fastenings and joints	861,609.41	85,892.53	52,673.74	9,488.01	58,964.13	2,204.49	46,262.07	11,138.14	12,078.79	307.84
809	Special Work	489,550.22	59,679.78	48,869.01	7,305.51	35,958.16	1,097.62	25,457.55	13,772.60	21,384.82	8.83
810	Underground construction	-	-	-	-	-	-	-	-	-	-
811	Track and roadway labor	527,866.42	116,022.84	53,125.74	6,305.00	68,529.34	1,977.05	46,430.78	6,848.86	26,218.10	1,486.96
812	Paving	602,821.72	42,630.71	124,310.41	20,967.56	78,960.96	5,309.80	43,841.71	987.58	1,878.87	20.82
813	Roadway machinery and tools	67,847.56	28.00	11,308.11	121.74	7,891.10	-	-	-	582.51	-
814	Tunnels and subways	-	-	-	-	-	-	-	-	-	-
815	Elevated structures and foundations	-	-	-	-	-	-	-	-	-	-
816	Bridges, trestles and culverts	14,673.79	14,451.52	3,977.47	596.47	3,037.92	283.33	3,424.37	107.43	1,054.38	110.83
817	Crossings, fences and signs	8,297.47	3,029.61	1,881.96	56.70	678.18	-	1,066.71	1,066.71	5,110.90	180.13
818	Signals and interlocking apparatus	84,474.80	134,790.17	2,903.63	4,382.00	1,409.46	-	618.19	1,206.07	-	-
819	Telephone and telegraph lines	-	361.63	-	-	-	-	-	-	-	-
820	Poles and fixtures	65,829.19	25,447.64	8,388.87	5,109.86	3,377.82	902.17	1,766.81	3,084.98	9,033.44	186.71
821	Underground conduits	2,202.78	-	-	458.34	-	-	-	-	-	-
822	Distribution system	1,113,608.05	86,137.28	47,821.48	7,523.45	35,577.48	2,680.21	37,706.53	5,066.79	15,096.98	190.20
823	General Office buildings	-	-	-	-	-	-	-	-	-	-
824	Shops and carhouses	61,296.20	4,746.87	12,617.84	10,838.99	8,266.69	-	3,066.29	-	2,038.19	-
825	Stations, Miscellaneous buildings and structures	118,884.47	30,467.68	7,946.33	2,840.48	5,519.34	-	498.18	1,880.20	140.88	-
826	Park and resort property	40,953.48	25,882.53	898.00	-	-	-	-	-	3,800.00	-
827	Cost of road purchased	-	-	-	75,087.50	-	-	-	-	-	39.90
828	Reconstruction of road purchased	-	-	-	4,910.17	-	712.68	-	-	-	12,868.68
829	Other expenditures - way and structures	37,464.46	10,098.14	7,908.42	2,880.80	8,060.24	-	5,027.81	1,464.83	9,097.17	898.16
	Unclassified Ways and Structures	-	-	-	-	-	-	-	-	-	-
	Total expenditures for Way and Structures	4,180,100.65	901,287.04	489,078.06	256,895.88	441,836.39	49,488.18	336,917.48	88,075.15	35,736.84	17,436.97
	II. Equipment										
830	Passenger and combination cars	8,296,195.21	888,504.78	581,958.99	106,788.71	80,167.27	-	398,088.21	416,018.66	212,884.62	-
831	Freight, express and mail cars	-	-	-	-	-	-	-	-	-	-
832	Service equipment	110,961.68	-	-	-	42,683.91	-	891.09	-	1,999.20	-
835	Electric equipment of cars	735,021.10	598,132.90	177,847.61	47,963.84	3,779.16	-	276,688.36	272,861.16	364,871.22	-
836	Shop equipment	61,089.08	-	1,886.27	-	4,400.08	-	2,487.16	-	1,849.78	-
837	Furniture	11,743.76	-	890.00	-	5,982.87	-	-	-	-	-
838	Miscellaneous equipment	169,073.60	-	2,711.56	-	1,046.56	-	3,107.22	-	24,690.85	-
	Total expenditures for Equipment	9,384,085.43	1,486,637.68	765,253.43	154,752.55	138,059.85	-	681,261.03	688,879.81	606,295.67	-
	III. Power										
839	Power plant buildings	680.80	-	-	-	-	-	-	-	-	-
840	Substation buildings	49,652.97	22,836.28	-	90,231.74	-	36,726.03	-	-	-	-
843	Substation equipment	286,840.41	178,847.41	2,319.82	305,002.84	80,234.84	118,541.46	-	-	-	-
844	Transmission system	89,251.25	88,562.88	20,762.74	-	431.44	-	1,222.96	-	385.78	-
	Total expenditures for Power	426,045.43	290,246.57	23,082.56	395,234.58	80,666.28	155,267.49	1,222.96	-	385.78	-
	IV. General and Miscellaneous										
845	Promotion	136,838.90	4,343.25	8,537.86	100.00	-	537.68	-	518.35	-	364.50
846	Law expenditures	-	-	-	64,517.60	-	-	-	-	1,909.66	-
847	Interest during construction	89,691.62	1,515.93	-	-	-	-	-	-	11,499.06	-
849	Taxes	-	-	-	-	-	-	-	-	-	-
850	Miscellaneous	-	-	-	-	-	-	-	-	-	-

Account No.	Account Name	Investment in Road & Equipment as of December 31, 1923.	1924		1925		1926		Eight Months to August 31, 1927	
			United Rys. & Electric Co.	Md. Elec. Rys. Co.*	United Rys. & Electric Co.	Md. Elec. Rys. Co.	United Rys. & Electric Co.	Md. Elec. Rys. Co.	United Rys. & Electric Co.	Md. Elec. Rys. Co.
	Investment as of June 30, 1914	69,943,603.75	5,601,628.68	100,865.66	-	45,231.89	1,800.00	1,079,032.86	1,000.00	-
	I. Way and Structures.									
601	Engineering & superintendence	126,853.78	13,758.63	11,887.80	15,802.88	14,584.25	2,212.89	10,162.76	1,441.33	899.89
602	Right of Way	23,407.34	3,312.55	-	-	5,521.39	2,364.00	600.00	36.35	83.10
603	Other land used in elec. railway operations	17,194.07	84,024.35	-	47,673.04	2,040.00	25,542.60	-	26,100.09	-
604	Grading	481,482.27	69,813.82	41,217.52	4,658.67	51,089.20	2,724.45	30,260.96	5,406.91	492.98
605	Ballast	375,864.82	28,413.56	9,406.82	4,185.07	40,931.71	860.89	29,342.48	5,961.06	21,752.89
606	Ties	93,340.52	34,778.18	13,944.91	2,466.64	16,336.06	611.00	14,507.76	4,865.18	3,226.57
607	Rails, rail fastenings and joints	661,609.41	85,692.53	52,673.74	9,488.01	58,964.13	2,204.49	44,262.07	11,138.14	14,075.79
608	Special Work	659,530.22	69,679.78	48,269.01	7,308.51	36,958.16	1,097.82	25,457.35	13,772.60	21,364.82
609	Underground construction	-	-	-	-	-	-	-	-	-
610	Track and roadway labor	827,866.42	116,022.84	53,125.74	6,308.00	68,529.34	1,977.05	46,430.78	6,848.88	26,218.10
611	Paving	802,821.75	42,650.91	134,310.41	20,957.56	78,960.98	5,309.80	43,841.71	987.58	1,278.87
612	Roadway machinery and tools	67,867.56	28.00	11,306.11	121.74	7,691.10	-	-	-	582.51
613	Tunnels and subways	-	-	-	-	-	-	-	-	-
614	Elevated structures and foundations	-	-	-	-	-	-	-	-	-
615	Bridges, trestles and culverts	14,673.79	15,451.52	3,977.47	596.47	3,037.92	283.33	3,424.37	107.43	1,054.35
616	Crossings, fences and signs	5,297.47	3,029.61	1,651.96	56.70	678.18	-	1,084.71	1,055.71	6,110.90
617	Signals and interlocking apparatus	24,474.50	136,780.17	2,903.63	4,382.00	1,409.46	-	618.19	1,206.07	-
618	Telephone and telegraph lines	-	361.63	-	-	-	-	-	-	-
619	Poles and fixtures	65,829.19	25,467.64	8,388.87	5,109.86	3,377.82	902.17	1,764.81	3,084.98	9,035.46
620	Underground conduits	2,208.78	-	-	456.34	-	-	-	-	-
621	Distribution system	1,113,608.08	86,137.28	47,821.48	7,523.43	35,677.42	2,680.21	37,706.53	3,066.79	15,096.08
622	General Office buildings	-	-	-	-	-	-	-	-	-
623	Shops and carhouses	61,296.20	4,746.87	12,817.84	10,838.99	8,266.69	-	3,064.29	-	2,039.19
624	Stations, Miscellaneous buildings and structures	118,884.47	30,467.68	7,964.33	2,840.48	3,519.84	-	493.18	1,860.20	140.82
625	Park and resort property	40,939.42	25,881.53	898.00	-	-	-	-	-	2,800.00
627	Cost of road purchased	-	-	-	75,037.50	-	-	-	-	-
628	Reconstruction of road purchased	-	-	-	4,910.17	-	712.68	-	-	-
629	Other expenditures - way and structures	37,464.44	10,098.14	7,508.48	2,680.80	8,060.84	-	8,027.81	1,464.83	9,097.17
	Unclassified Ways and Structures	-	-	-	-	-	-	-	-	-
	Total expenditures for Way and Structures									
	II. Equipment									
630	Passenger and combination cars	3,298,195.31	888,504.78	381,958.99	106,788.71	50,167.87	-	396,088.21	416,018.65	212,884.69
631	Freight, express and mail cars	-	-	-	-	-	-	-	-	-
632	Service equipment	110,961.65	-	-	-	42,683.91	-	891.09	-	1,999.20
633	Electric equipment of cars	736,021.10	598,132.90	177,847.81	47,963.84	3,779.16	-	276,685.35	272,861.16	366,871.22
636	Shop equipment	61,089.08	-	1,855.27	-	4,400.08	-	2,487.16	-	2,549.76
637	Furniture	11,965.76	-	890.00	-	5,952.87	-	-	-	-
638	Miscellaneous equipment	169,079.60	-	1,711.38	-	1,046.96	-	3,107.22	-	26,490.85
	Total expenditures for Equipment									
	III. Power									
639	Power plant buildings	680.80	-	-	-	-	-	-	-	-
640	Substation buildings	49,652.97	22,236.28	-	90,231.74	-	36,796.03	-	-	-
643	Substation equipment	288,540.41	178,847.61	2,319.82	303,002.84	20,234.84	115,541.48	-	-	385.78
644	Transmission system	89,251.25	88,562.88	20,762.74	-	121.44	-	1,222.96	-	-
	Total expenditures for Power									
	IV. General and Miscellaneous									
645	Franchises	136,833.90	4,343.25	8,537.86	100.00	-	537.68	-	518.35	-
646	Law expenditures	-	-	-	64,517.60	-	-	-	-	1,303.65
647	Interest during construction	59,691.62	1,515.93	-	-	-	-	-	-	11,499.05
649	Taxes	-	-	-	-	-	-	-	-	1,039.02
650	Miscellaneous	36,009.56	4,684.61	12,960.67	10,921.16	17,069.92	977.32	10,403.27	1,067.85	946.53
	Total General & Miscellaneous Expenditures									
	Total Investment in Road and Equipment									

* Includes Baltimore, Halethorpe and Elk Ridge Ry. Co. and Baltimore, Sparrows Point and Chesapeake Ry. Co., which were consolidated with Maryland Electric Ry. Co. March 20, 1924.

Peoples Counsel Exhibit No. 48

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

AND

THE MARYLAND ELECTRIC RAILWAYS COMPANY

Investment in Road and Equipment as Shown by Books as of December 31, 1923 and Net Additions thereto for the Years 1924, 1925, 1926, and Eight Months to August 31, 1927.

	Investment in Road & Equipment as of December 31, 1923.		1924		1925		1926		Eight Months to August 31, 1927		----Total Investment to August 31, 1927.----		
	United Rys. & Electric Co.	Md. Elec. Rys. Co.	United Rys. & Electric Co.	Md. Elec. Rys. Co.	United Rys. & Electric Co.	Md. Elec. Rys. Co.	United Rys. & Electric Co.	Md. Elec. Rys. Co.	United Rys. & Electric Co.	Md. Elec. Rys. Co.	United Rys. & Electric Co.	Md. Elec. Rys. Co.	Total
1914	69,963,603.75	5,681,428.65	100,865.66	-	45,231.89	1,800.00	1,079,032.84	1,000.00	-	-	68,738,474.86	5,679,128.65	76,417,602.89
	184,853.78	13,758.63	11,887.80	15,802.88	14,684.25	2,212.89	10,162.76	1,441.55	898.89	272.86	161,290.80	33,480.06	194,770.86
	23,407.34	3,312.55	-	-	5,521.39	2,364.00	600.00	34.36	83.10	1,434.80	29,611.83	7,145.40	36,757.23
operations	17,194.07	86,084.35	-	47,673.04	2,040.00	25,542.60	-	26,100.09	-	-	19,234.07	185,300.08	204,534.15
	431,482.27	69,813.22	41,217.52	4,656.67	51,889.20	2,724.45	30,280.96	5,406.91	492.95	995.82	555,362.90	83,597.07	638,961.97
	375,866.82	28,413.56	9,406.82	4,185.07	40,931.71	866.89	29,542.48	3,941.06	21,752.89	1,948.25	476,500.72	39,353.83	515,854.55
	93,240.52	34,778.18	13,944.91	2,466.64	16,336.06	611.00	14,507.76	4,865.18	3,286.57	35.15	140,317.82	42,736.15	183,053.97
	561,609.41	85,892.53	52,673.76	9,485.01	58,964.13	2,204.49	44,262.07	11,132.14	11,075.79	907.84	721,985.16	109,627.75	831,612.91
	689,330.22	89,679.78	48,869.01	7,306.51	35,958.16	1,097.62	25,457.35	13,772.60	21,864.82	5.84	790,899.56	111,860.27	902,759.83
	-	-	-	-	-	-	-	-	-	-	-	-	-
	527,866.42	116,022.86	53,125.74	6,306.00	68,529.34	1,977.05	46,430.78	6,848.88	26,516.10	1,496.96	722,187.38	132,650.13	854,837.51
	802,821.73	42,650.91	184,310.41	20,987.56	78,960.98	5,309.80	43,841.71	987.58	1,878.87	30.83	1,066,535.96	69,916.68	1,136,452.64
	67,867.56	28.00	11,306.11	121.74	7,891.10	-	-	-	562.51	-	87,313.28	149.74	87,463.02
	-	-	-	-	-	-	-	-	-	-	-	-	-
	-	-	-	-	-	-	-	-	-	-	-	-	-
ions	14,673.79	16,451.52	5,977.47	596.47	3,037.92	283.33	3,424.37	107.45	1,054.33	110.53	26,167.88	17,949.30	44,717.18
	5,297.67	3,029.61	1,651.96	56.70	678.18	-	1,056.71	1,056.71	5,110.90	120.13	11,882.00	4,263.17	16,145.17
ems	84,474.80	134,790.17	2,903.63	4,362.00	1,409.46	-	618.19	1,206.07	-	-	89,406.78	142,358.24	171,765.02
	-	361.63	-	-	-	-	-	-	-	-	-	361.63	361.63
	65,829.19	25,467.64	8,386.87	5,109.68	3,377.82	902.17	1,765.81	3,084.98	9,033.46	184.71	88,396.15	34,407.98	122,804.11
	2,202.78	-	-	458.34	-	-	-	-	-	-	2,202.78	458.34	2,661.12
	1,115,602.05	86,137.28	47,821.46	7,523.43	35,577.42	2,650.21	37,706.53	3,066.79	12,096.08	190.20	1,248,803.54	101,567.91	1,348,371.45
	-	-	-	-	-	-	-	-	-	-	-	-	-
	81,296.20	4,746.87	13,817.84	10,538.99	8,266.49	-	3,064.29	-	2,035.19	-	107,479.21	15,285.86	122,765.07
rs and structures	118,886.47	30,467.48	7,964.35	2,840.48	3,519.84	-	498.18	1,860.20	140.82	-	130,813.66	35,168.16	165,981.82
	40,958.42	25,892.53	898.00	-	-	-	-	-	5,800.00	-	46,856.42	25,892.53	72,748.95
	-	-	-	75,027.50	-	-	-	-	-	29.90	-	75,057.40	75,057.40
el	-	-	-	4,910.17	-	712.68	-	-	-	12,865.62	-	18,488.47	18,488.47
tructures	37,464.66	10,098.14	7,508.42	2,880.80	8,060.84	-	5,027.81	1,464.85	9,097.17	898.16	67,158.90	15,341.95	82,500.85
es	-	-	-	-	-	-	-	-	-	-	-	-	-
and Structures	1,180,100.65	305,237.04	459,072.06	235,295.80	441,438.29	49,681.18	836,917.28	87,972.18	[illegible]	17,[illegible]	[illegible]	[illegible]	[illegible]
	5,296,195.31	886,504.78	381,988.99	106,788.71	50,167.27	-	398,088.21	416,018.68	212,884.62	-	5,915,445.16	979,[illegible].84	4,494,760.00
	-	-	-	-	-	-	-	-	-	-	-	-	-
	110,961.68	-	-	-	42,685.91	-	891.09	-	1,999.20	-	156,538.08	-	156,538.08
	735,021.10	598,132.90	177,847.81	47,963.84	5,779.16	-	276,685.35	272,861.16	546,871.22	-	1,552,665.32	373,638.90	1,926,481.90
	61,089.08	-	1,856.27	-	4,400.08	-	2,487.16	-	2,549.78	-	72,381.31	-	72,381.31
	11,743.76	-	890.00	-	5,982.87	-	-	-	-	-	18,896.63	-	18,896.63
	169,079.60	-	2,711.38	-	1,046.58	-	3,107.22	-	24,490.83	-	181,435.78	-	181,435.78
ipment	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	-	[illegible]	[illegible]	[illegible]	-	[illegible]	[illegible]	[illegible]
	620.80	-	-	-	-	-	-	-	-	-	620.80	-	620.80
	49,652.97	22,536.28	-	90,231.74	-	36,796.03	-	-	-	-	49,652.97	149,564.05	199,219.02
	288,540.41	178,247.61	2,319.82	303,002.84	80,234.84	115,541.48	-	-	385.78	-	261,011.77	596,771.93	857,903.70
	89,251.25	88,562.88	20,762.74	-	481.44	-	1,222.96	-	-	-	110,815.51	88,562.88	199,378.39
er	428,065.43	289,346.77	23,082.56	393,234.58	80,716.28	152,337.51	1,222.96	-	385.78	-	422,101.05	834,780.86	1,256,881.91
	136,833.90	4,343.25	8,537.86	100.00	-	537.68	-	518.35	-	364.50	147,371.76	5,963.78	153,335.54
	-	-	-	64,517.60	-	-	-	-	1,303.66	-	1,303.66	64,517.60	63,213.95
	-	-	-	-	-	-	-	-	-	-	[illegible]	[illegible]	[illegible]

Investment in Road & Equipment as of December 31, 1923.		1924		1925		1926		Eight Months to August 31, 1927		——Total Investment to August 31, 1927.——		
United Rys. & Electric Co.	Md. Elec. Rys. Co.*	United Rys. & Electric Co.	Md. Elec. Rys. Co.	United Rys. & Electric Co.	Md. Elec. Rys. Co.	United Rys. & Electric Co.	Md. Elec. Rys. Co.	United Rys. & Electric Co.	Md. Elec. Rys. Co.	United Rys. & Electric Co.	Md. Elec. Rys. Co.	Total
69,963,603.75	5,661,629.65	100,865.64	-	65,231.89	1,800.00	1,079,058.84	1,000.00	-	-	68,726,474.84	5,679,128.65	76,417,698.89
134,853.76	13,750.65	11,887.80	15,802.88	14,684.25	2,212.89	10,162.76	1,441.35	899.89	272.86	161,290.20	33,686.08	194,779.28
23,407.34	5,312.85	-	-	5,521.39	2,364.00	600.00	34.38	83.10	1,484.80	29,611.83	7,195.40	36,787.38
17,196.07	84,084.38	-	47,673.04	2,040.00	26,542.60	-	86,100.09	-	-	19,236.07	196,520.09	215,756.16
431,482.27	69,813.82	41,217.82	4,688.67	51,989.20	2,734.45	30,260.96	5,406.91	492.96	998.82	555,342.20	83,143.67	638,485.87
375,844.82	28,413.86	9,406.82	4,185.07	40,931.71	866.89	29,342.48	3,941.06	2,752.89	1,948.25	478,220.72	39,284.85	517,527.57
93,240.88	34,778.18	12,944.91	2,466.64	14,336.04	611.00	14,807.76	4,868.18	1,284.57	38.15	136,617.88	42,722.13	180,072.97
861,809.41	85,892.53	52,673.76	9,485.01	58,964.13	2,204.49	46,262.07	11,188.14	12,076.79	307.84	721,986.14	109,027.75	830,413.97
659,530.22	89,679.78	48,269.01	7,308.81	35,958.16	1,097.62	28,457.35	13,772.60	21,364.82	8.86	793,979.56	111,866.87	905,846.43
-	-	-	-	-	-	-	-	-	-	-	-	-
827,866.42	116,022.84	53,125.74	6,306.00	68,529.34	1,977.08	46,430.78	6,848.88	25,215.10	1,406.96	722,167.38	132,680.13	854,847.51
802,821.73	42,630.91	184,310.41	80,957.56	78,960.98	5,309.80	43,841.71	987.58	1,278.87	30.85	1,048,695.96	69,914.69	1,118,610.64
67,567.84	28.00	11,308.11	121.74	7,891.10	-	-	-	582.51	-	87,349.26	149.74	87,499.00
-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-
14,673.79	14,451.52	3,977.47	596.47	3,037.92	283.33	3,434.37	107.43	1,054.38	110.58	26,197.96	17,949.33	44,717.16
5,297.67	3,029.61	1,451.96	56.70	678.18	-	1,056.71	1,056.71	5,110.90	180.15	11,682.00	4,323.17	16,005.17
24,474.80	136,780.17	2,903.63	4,382.00	1,409.46	-	619.19	1,206.07	-	-	29,606.78	142,368.24	171,975.02
-	361.63	-	-	-	-	-	-	-	-	-	361.63	361.63
65,829.19	25,467.64	8,368.87	5,109.88	3,377.82	902.17	1,764.81	3,084.98	9,033.66	184.71	88,396.15	34,607.96	123,004.11
2,202.78	-	-	458.34	-	-	-	-	-	-	2,202.78	458.34	2,661.12
1,115,608.05	88,137.28	47,821.46	7,523.45	35,577.48	2,680.21	37,706.55	5,066.79	13,096.68	190.80	1,266,808.84	101,857.21	1,368,671.45
-	-	-	-	-	-	-	-	-	-	-	-	-
61,296.20	4,766.87	12,817.84	10,538.99	8,266.69	-	5,064.29	-	9,038.19	-	107,479.21	15,305.86	122,784.07
118,884.47	30,467.68	7,964.35	2,840.48	3,519.84	-	495.18	1,860.20	140.82	-	130,815.68	34,868.36	165,684.04
40,928.42	25,892.53	898.00	-	-	-	-	-	3,800.00	-	45,621.42	25,892.53	70,513.95
-	-	-	75,097.00	-	-	-	-	-	89.90	-	75,977.40	75,977.40
-	-	-	4,910.17	-	712.68	-	-	-	12,865.66	-	18,488.51	18,488.51
37,464.46	10,096.14	7,808.42	2,880.80	8,060.86	-	5,027.81	1,466.85	9,097.17	888.16	67,181.80	15,331.95	82,513.75
-	-	-	-	-	-	-	-	-	-	-	-	-
1,160,100.65	908,287.06	439,078.06	238,891.80	445,630.79	47,451.11	196,217.48	86,078.11	89,189.15	17,810.50	4,888,126.73	2,618,417.58	7,506,544.31
3,298,195.21	886,806.78	381,988.99	106,788.71	80,167.57	-	398,088.21	414,018.68	212,884.62	-	5,918,665.16	879,274.84	6,496,760.00
-	-	-	-	-	-	-	-	-	-	-	-	-
110,961.48	-	-	-	42,683.91	-	891.09	-	1,999.20	-	156,535.68	-	156,535.68
738,081.10	898,152.90	177,867.81	47,963.84	3,779.18	-	275,685.36	272,861.16	366,871.22	-	1,562,464.38	373,039.90	1,935,504.28
61,089.08	-	1,858.27	-	4,409.08	-	2,457.16	-	2,349.78	-	72,381.31	-	72,381.31
11,788.76	-	890.00	-	5,952.87	-	-	-	-	-	18,894.63	-	18,894.63
169,079.80	-	2,711.36	-	1,046.86	-	3,107.22	-	26,490.85	-	188,436.92	-	188,436.92
4,888,396.56	1,785,137.68	565,324.43	155,740.55	100,157.48	-	681,157.03	686,879.84	118,044.75	-	7,187,211.31	952,313.74	8,139,525.05
680.80	-	-	-	-	-	-	-	-	-	680.80	-	680.80
49,652.97	22,538.28	-	90,231.74	-	34,796.03	-	-	-	-	49,652.97	149,566.05	199,219.02
286,540.41	178,247.61	2,319.82	305,002.84	80,234.84	115,541.68	-	-	288.78	-	261,011.77	596,771.93	857,803.70
89,251.25	88,562.88	20,762.74	-	491.44	-	1,222.96	-	-	-	110,515.51	88,562.88	199,378.39
426,085.43	289,348.77	23,082.56	395,234.58	80,726.28	150,337.71	1,222.96	-	288.78	-	421,861.05	834,900.86	1,256,761.91
156,833.90	4,340.25	8,537.86	100.00	-	597.68	-	516.35	-	564.50	147,371.76	8,863.78	156,235.54
-	-	-	64,317.60	-	-	-	-	1,303.65	-	1,303.65	64,317.60	65,213.95
39,691.62	1,518.93	-	-	-	-	-	-	11,499.05	-	48,152.57	1,518.93	49,708.50
-	-	-	-	-	-	-	-	1,039.08	-	1,039.08	-	1,039.08
38,309.56	4,684.61	12,960.67	10,921.16	17,069.92	977.32	10,403.27	1,067.85	946.53	293.43	79,389.95	17,944.37	97,334.32
234,835.08	10,543.79	21,498.53	75,338.76	17,069.92	1,515.00	10,403.27	1,584.20	15,098.31	857.93	277,834.31	93,044.68	370,878.99
88,185,395.41	6,874,415.95	968,050.94	856,422.77	401,287.70	201,315.63	89,317.82	60,490.48	150,222.50	20,222.05	91,850,986.16	8,152,446.88	100,003,433.04

* Ry. Co.
e Ry. Co..
ric Ry. Co.

People's Counsel Exhibit NO. 4

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

THE MARYLAND ELECTRIC RAILWAYS COMPANY

Average Rate of Interest on Indebtedness at September 30, 1927.

United Company	Securities Outstanding	Interest Rate	Annual Interest
Underlying Bonds	$ 5,542,000	5%	$ 277,100.00
1st Consolidated Mortgage	23,766,000	4%	950,640.00
" " "	8,684,000	6%	521,040.00
Funding Bonds	3,892,700	5%	194,635.00
Three Year Gold Notes	2,500,000	6%	150,000.00
Income Bonds	13,977,000	4%	559,080.00
Notes (Bank Loans)	1,900,000	4.75	90,250.00
TOTAL	60,261,700	4.5514	2,742,745.00
Maryland Elec. Rys. Co.			
1st Mtg. Gold Bonds	2,937,000	5%	146,850.00
1st & Refunding Mtg. Series "A"	3,877,500	6½%	252,037.50
Balto. Sp. Pt. & Ches. Ry. Co.	2,000,000	4½%	90,000.00
	8,814,500	5.5464	488,887.50
TOTAL	69,076,200	4.6783	3,231,632.50
Average Rate of Interest		4.6783%	

People's Counsel Exhibit No. 50

UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Statement of Notes Outstanding September 30, 1927.

No.	Name of Bank	Date of Note	Due Date	Rate	Amount
874	Merchants National	June 27, 1927	Oct. 27/27	4½%	100,000
875	"	"	"	4½%	100,000
876	"	"	"	4½%	100,000
877	"	"	"	4½%	100,000
878	"	"	"	4½%	100,000
879	Bank of Manhattan Co. N. Y.	July 28, 1927	Nov. 28/27	4½%	100,000
880	"	"	"	4½%	100,000
881	"	"	"	4½%	100,000
882	"	"	"	4½%	100,000
883	Maryland Trust Co.	"	"	4½%	100,000
885	National Bank of Baltimore	Aug. 1, 1927	Dec. 1/27	5%	100,000
886	"	"	Oct.31/27	5%	25,000
887	Continental Trust Co.	"	Dec. 1/27	5%	25,000
888	Baltimore Trust Co.	"	"	5%	50,000
889	"	Aug.18, 1927	Dec.19/27	4½%	100,000
890	"	"	"	4½%	100,000
891	"	"	"	4½%	100,000
892	"	"	"	4½%	100,000
893	Baltimore Commercial	"	"	4½%	100,000
894	Drovers and Mechanics	Aug.19, 1927	Dec.19/27	5%	100,000
895	Equitable Trust Co.	"	"	4½%	100,000
					1,900,000

Weighted Average Interest Rate ---------- 4.74

208

People's Counsel Exhibit No. 51

AVERAGE WEIGHTED INTEREST RATES OF SECURITIES AUTHORIZED TO BE ISSUED BY THE PUBLIC SERVICE COMMISSION OF MD. FROM JANUARY 1, 1921 to DECEMBER 31, 1926.

YEAR	AVERAGE INTEREST RATE
1921	6.35%
1922	5.84%
1923	5.46%
1924	5.33%
1925	5.32%
1926	5.12%

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

THE MARYLAND ELECTRIC RAILWAYS COMPANY

COMPARATIVE CONSOLIDATED GENERAL BALANCE SHEETS - YEARS ENDED DECEMBER 31, 1923, 1924, 1925 AND 1926, AND AT AUG. 31, 1927.

ASSETS	Dec. 31, 1923	Dec. 31, 1924	Dec. 31, 1925	Dec. 31, 1926	Aug. 31, 1927
Road and Equipment	$88,571,841.34	$90,396,714.05	$91,[illegible],815.44	$90,394,877.14	$90,575,521.66
Sinking and Depreciation Funds (The Md. Elec. Rys. Co.)					
5% General - 1st Ptge. 5% Bonds	129.55	532.67	818.01	606.64	211.64
5% Special - Cars and Rolling Stock	260,362.61	321,258.15	388,156.47	426,778.08	434,434.48
Series "A" Sinking Fund - 6% Bonds	-	100.00	175.00	350.00	350.00
Series "B" " " - 6% "	-	150.00	25.00	200.00	200.00
Series "A" Depreciation Fund - 6½% Bonds	-	-	14,872.97	19,309.52	26,347.94
Series "B" " " - 6½% "	-	-	2,500.00	-	-
Total Sinking and Depreciation Funds	260,492.16	342,040.82	376,547.45	447,244.24	461,544.06
Deposits in Lieu of Mortgaged Property Sold	35,312.32	55,272.59	-	-	-
Investments in Affiliated Companies					
Stocks	73,197.00	73,197.00	273,497.00	273,497.00	273,497.00
Bonds	72,050.00	72,050.00	72,050.00	72,050.00	72,050.00
Notes	14,087.70	14,087.70	14,087.70	14,087.70	14,087.70
Advances	497,127.57	450,421.66	454,936.91	457,947.15	445,628.21
Other Investments					
Stocks	1,030.00	1,030.00	1,030.00	1,000.00	1,000.00
Miscellaneous	1,638.42	1,400.00	-	-	-
Total Investments	859,127.69	612,186.36	815,601.61	818,581.85	806,262.91
Current Assets					
Cash	309,129.82	421,051.17	155,381.78	247,661.44	282,064.89
Special Deposits	135,304.00	457,823.05	287,673.25	294,739.75	294,739.75
Miscellaneous Accounts Receivable	126,017.55	74,519.67	108,453.49	183,459.43	93,456.11
Material and Supplies	1,022,380.33	1,129,602.19	1,192,200.84	1,161,103.36	1,122,771.61
Interest, Dividends and Rents Receivable	22,415.81	25,674.44	28,593.38	32,050.93	60,445.89
Total Current Assets	1,615,247.51	2,108,670.52	1,772,302.74	1,919,014.91	1,853,478.06
Deferred Assets					
Unexpired Insurance, Interest &/o					
Discount on &/o Equipment Purchase	4145,877.16	96,892.61	96,892.61	20,417.08	20,417.08
Improvements to Property	55,129.23	84,621.04	117,600.48	131,145.79	151,694.62
Miscellaneous Deferred Debit Items	3,426.15	-	-	-	-
Total Deferred Assets	204,432.54	181,513.65	214,493.09	151,562.87	172,111.70
Unadjusted Debits					
Rents and Insurance Premiums Paid in Advance	93,913.95	39,725.28	9,382.54	113,815.50	92,030.00
Discount on Funded Debt	700,875.81	855,190.53	806,972.21	746,877.82	722,652.15
Property Abandoned - to be Amortized	59,500.11	108,087.42	131,226.57	1,076,062.63	1,196,388.42
Other Unadjusted Debits	45,650.76	350,127.95	827,280.08	886,454.73	939,734.70
Total Unadjusted Debits	899,940.63	1,363,131.18	1,773,761.40	2,823,210.68	2,950,745.27
TOTAL	92,246,394.19	95,039,329.17	96,038,521.73	96,854,491.69	96,661,683.66

	Dec. 31, 1923	Dec.
Capital Stock	$20,461,200.00	$20,4
Grants in Aid of Construction	90,259.45	
Funded Debt		
Mortgage Bonds	43,497,000.00	47,3
Income Bonds	13,977,000.00	13,9
Miscellaneous Obligations	6,392,700.00	6,0
Total Funded Debt	63,866,700.00	67,6
Non-Negotiable Debt to Affiliated Co.	-	
Current Liabilities		
Loans and Notes Payable	1,068,000.00	
Audited Accounts and Wages Payable	426,526.94	5
Matured Interest, Dividends & Rents Unpaid	135,304.00	1
Accrued Interest, Dividends & Rents Payable	775,938.56	7
Total Current Liabilities	2,405,769.50	1,4
Other Deferred Liabilities	-	
Unadjusted Credits		
Tax Liability	442,239.51	2
Reserve for Injuries and Damages	355,317.15	3
Accrued Depreciation Road and Equipment	1,187,374.92	1,1
Other Unadjusted Credits	869,547.17	7
Total Unadjusted Credits	2,854,478.75	2,8
Corporate Surplus		
Reserve for Depreciation of Investments and for Contingent Liability	383,280.00	3
Profit and Loss	1,782,706.49	1,9
Total Corporate Surplus	2,165,986.49	2,2
To Balances par value of Capital Stock (Eliminated) and also book value (Eliminated) at which it is carried on U.R.& E.Co. books as follows :		
B. Sp. Pt. & C. Ry. Co.	392,000.00	
B. T. & E. Ry. Co.	10,000.00	
# Maryland Elec. Rys. Co.		
# After eliminating Book Value of Leases ($1,164,000)		2
TOTAL	92,246,394.19	95,0

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

THE MARYLAND ELECTRIC RAILWAYS COMPANY

People's Counsel Exhibit No. 52 Sheet 1.

COMPARATIVE CONSOLIDATED GENERAL BALANCE SHEETS - YEARS ENDED DECEMBER 31, 1923, 1924, 1925 AND 1926, AND AT AUG. 31, 1927.

	Dec. 31, 1923	Dec. 31, 1924	Dec. 31, 1925	Dec. 31, 1926	Aug. 31, 1927
Capital Stock	$20,461,200.00	$20,461,200.00	$20,461,200.00	$20,461,200.00	[illegible]
Grants in Aid of Construction	90,259.45	90,259.45	90,259.45	90,259.45	118,471.38
Funded Debt					
Mortgage Bonds	43,497,000.00	47,304,000.00	47,101,500.00	46,892,500.00	[illegible]
Income Bonds	13,977,000.00	13,977,000.00	13,977,000.00	13,977,000.00	[illegible]
Miscellaneous Obligations	6,392,700.00	6,392,700.00	6,392,700.00	6,392,700.00	[illegible]
Total Funded Debt	63,866,700.00	67,673,700.00	67,471,200.00	67,262,200.00	67,176,200.00
Non-Negotiable Debt to Affiliated Co.	-	-	200,000.00	200,000.00	200,000.00
Current Liabilities					
Loans and Notes Payable	1,068,000.00	-	900,000.00	1,025,000.00	[illegible]
Audited Accounts and Wages Payable	426,526.94	505,369.68	363,143.87	342,445.87	[illegible]
Matured Interest, Dividends & Rents Unpaid	135,304.00	151,394.50	267,673.25	294,739.75	[illegible]
Accrued Interest, Dividends & Rents Payable	775,938.56	767,676.66	767,676.66	767,676.66	[illegible]
Total Current Liabilities	2,405,769.50	1,424,441.04	2,318,493.18	2,429,862.28	[illegible]
Other Deferred Liabilities	-	-	-	264,485.59	[illegible]
Unadjusted Credits					
Tax Liability	442,239.51	294,796.30	297,606.86	367,571.44	[illegible]
Reserve for Injuries and Damages	355,317.15	359,485.55	326,910.63	302,160.97	[illegible]
Accrued Depreciation Road and Equipment	1,187,374.92	1,195,695.32	1,303,799.05	1,520,641.26	[illegible]
Other Unadjusted Credits	869,547.17	717,179.15	721,820.74	738,620.48	[illegible]
Total Unadjusted Credits	2,854,478.75	2,567,154.32	2,650,139.28	2,928,894.15	[illegible]
Corporate Surplus					
Reserve for Depreciation of Investments and for Contingent Liability	383,280.00	590,760.00	590,760.00	645,750.00	[illegible]
Profit and Loss	1,782,706.49	1,980,817.52	2,005,472.96	2,020,663.40	[illegible]
Total Corporate Surplus	2,165,986.49	2,571,597.52	2,596,232.96	2,666,413.40	[illegible]
To Balances par value of Capital Stock (Eliminated) and also book value (Eliminated) at which it is carried on M.R.& N.Co. books as follows:					
B. Sp. Pt. & C. Ry. Co.	392,000.00				
B. M. & N. Ry. Co.	10,000.00				
Maryland Elec. Rys. Co.					
After eliminating Book Value of Leases ($1,164,000)		250,976.84	250,976.84	250,976.84	[illegible]
TOTAL	92,246,394.19	95,039,329.17	96,038,821.73	96,554,491.69	[illegible]

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

COMPARATIVE BALANCE SHEETS - YEARS ENDED DECEMBER 31, 1923, 1924, 1925 AND 1926, AND AT AUG. 31, 1927.

ASSETS	Dec. 31, 1923	Dec. 31, 1924	Dec. 31, 1925	Dec. 31, 1926	Aug. 31, 1927
Investments					
Road and Equipment	$80,194,395.41	$81,162,446.35	$81,649,734.05	$81,560,416.23	$81,780,538.75
Deposits in lieu of Mortgaged Property Sold	35,312.32	55,072.59			
Investments in Affiliated Companies					
Stocks	81,197.00	232,020.16	432,320.16	432,320.16	432,320.16
Bonds	72,050.00	235,550.00	406,050.00	584,550.00	677,550.00
Notes	14,087.70	14,087.70	14,087.70	14,087.70	14,087.70
Advances	582,066.16	450,421.66	434,936.91	457,947.15	445,628.21
Other Investments					
Stocks	1,030.00	1,030.00	1,030.00	1,000.00	1,000.00
Miscellaneous	1,635.42	1,400.00			
Total Investments	80,981,774.01	82,152,028.46	82,958,158.82	83,050,321.24	83,291,124.80
Current Assets					
Cash	309,129.62	292,666.77	155,381.78	247,661.44	282,064.39
Special Deposits	138,304.00	457,823.05	287,673.25	294,739.75	294,739.75
Loans and Notes Receivable	-	75,000.00	75,000.00	75,000.00	75,000.00
Miscellaneous Accounts Receivable	126,017.55	99,521.14	112,676.00	233,662.62	128,589.94
Material and Supplies	1,022,380.33	1,129,602.19	1,192,200.84	1,161,103.36	1,122,771.61
Interest, Dividends and Rents Receivable	22,415.81	31,657.15	34,527.88	37,985.43	60,446.20
Total Current Assets	1,618,247.31	2,086,270.30	1,857,459.75	2,050,352.80	1,963,611.89
Deferred Assets					
Other Deferred Assets :					
Maryland Elec. Rys. Co. Lessor A/c Bond Proceeds	4,477,300.00				
Payments under 1½% Sinking Fund	1,357,511.80		6.19	12.38	
" " 7½% " "	1,715,816.88	1,800,958.45	1,870,080.06	1,938,701.67	1,946,358.07
" " Ser. "A" " "		40,000.00	79,600.00	118,775.00	118,775.00
" " " "B" " "		1,650.00	5,025.00	10,200.00	10,200.00
" " " "A" Deprec. "			59,400.00	98,575.00	137,350.00
" " " "B" " "			2,300.00	6,740.00	12,795.00
Initial Payment 10% A/c Equipment Purchased	145,877.16	96,892.61	96,892.61	20,417.08	20,417.08
Improvements to Property	55,129.23	84,621.04	117,600.48	131,145.79	151,694.62
	7,751,635.07	2,024,122.10	2,231,104.34	2,324,566.92	2,397,589.77
Less Property Retired	1,167,078.39	1,605,161.00	1,606,661.00	2,295,940.81	2,295,940.81
Total	6,584,556.68	418,961.10	624,443.34	28,626.11	101,648.96
Miscellaneous Deferred Debit Items	3,426.15	-	-	-	-
Total Deferred Assets	6,587,982.83	418,961.10	624,443.34	28,626.11	101,648.96
Other Unadjusted Debits					
Rents and Insurance Premiums Paid in Advance	93,913.95	39,725.28	9,382.54	113,815.50	92,030.00
Discount on Funded Debt	700,875.81	865,190.53	805,872.21	746,877.82	782,652.15
Property Abandoned - to be Amortized	59,500.11	108,087.42	121,226.57	1,076,082.63	1,196,328.42
Other Unadjusted Debits	45,650.76	331,131.45	937,280.00	886,454.73	929,625.54
Total Unadjusted Debits	899,940.63	1,344,134.68	1,773,761.40	2,823,210.68	3,000,636.11
TOTAL	90,084,944.98	86,001,394.54	87,213,823.31	87,952,510.83	88,357,021.76

LIABILITIES	Dec. 31, 1923	Dec.
Capital Stock	$ 20,461,200.00	$20,46
Grants in Aid of Construction	-	-
Funded Debt		
Mortgage Bonds	37,992,000.00	37,9
Income Bonds	13,977,000.00	13,97
Miscellaneous Obligations	6,392,700.00	6,39
	58,361,700.00	58,36
Current Liabilities		
Loans and Notes Payable	-	
Audited Accounts & Wages Payable	405,697.84	50
Matured Interest, Dividends & Rents Unpaid	135,304.00	13
Accrued Interest, Dividends & Rents Payable	775,938.56	77
Total Current Liabilities	1,316,940.40	1,43
Deferred Liabilities		
Maryland Electric Rys. Co., Bond Issue.	4,946,000.00	
Other Deferred Liabilities	-	
Total Deferred Liabilities	4,946,000.00	
Unadjusted Credits		
Tax Liability	442,239.51	29
Insurance and Casualty Reserves	355,317.15	35
Operating Reserves	1,187,374.92	1,19
Accrued Depreciation Road and Equipment	785,929.42	1,32
Other Unadjusted Credits		
Total Unadjusted Credits	2,770,861.00	3,17
Corporate Surplus		
Miscellaneous Fund Reserves	383,280.00	59
Profit and Loss	1,844,863.58	1,98
Total Corporate Surplus	2,228,243.58	2,57
TOTAL	90,084,944.98	86,00

People's Counsel Exhibit No. 52

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

COMPARATIVE BALANCE SHEETS - YEARS ENDED DECEMBER 31, 1923, 1924, 1925 AND 1926, AND AT AUG. 31, 1927.

923	Dec. 31, 1924	Dec. 31, 1925	Dec. 31, 1926	Aug. 31, 1927	LIABILITIES	Dec. 31, 1923	Dec. 31, 1924	Dec. 31, 1925	Dec. 31, 1926	Aug. 31, 1927
,41	$81,162,446.38	$81,649,734.05	$81,560,416.23	$81,720,538.73	Capital Stock	$ 20,461,200.00	$20,461,200.00	$20,461,200.00	$20,461,200.00	$20,461,200.00
					Grants in Aid of Construction	-	-	-	-	-
,32	55,072.59				Funded Debt					
					Mortgage Bonds	37,992,000.00	37,992,000.00	37,992,000.00	37,992,000.00	37,992,000.00
,00	232,020.16	432,320.16	432,320.16	432,320.16	Income Bonds	13,977,000.00	13,977,000.00	13,977,000.00	13,977,000.00	13,977,000.00
,00	235,550.00	406,050.00	584,550.00	677,550.00	Miscellaneous Obligations	6,392,700.00	6,392,700.00	6,392,700.00	6,392,700.00	6,392,700.00
,70	14,087.70	14,087.70	14,087.70	14,087.70		58,361,700.00	58,361,700.00	58,361,700.00	58,361,700.00	58,361,700.00
,15	450,421.66	454,936.91	457,947.15	445,888.21						
,00	1,030.00	1,030.00	1,000.00	1,000.00	Current Liabilities					
,42	1,400.00				Loans and Notes Payable	-	-	900,000.00	1,025,000.00	1,025,000.00
,01	82,152,028.46	82,958,158.82	83,050,321.24	83,291,124.80	Audited Accounts & Wages Payable	405,697.84	505,369.68	363,143.27	342,445.67	371,138.73
					Matured Interest, Dividends & Rents Unpaid	135,304.00	151,394.50	267,672.25	294,739.75	294,739.75
,82	292,666.77	155,381.78	247,661.44	282,064.39	Accrued Interest, Dividends & Rents Payable	775,938.56	773,611.16	773,611.16	775,611.16	636,933.19
,00	457,823.05	287,673.25	294,739.75	294,739.75						
	75,000.00	75,000.00	75,000.00	75,000.00	Total Current Liabilities	1,316,940.40	1,430,375.34	2,324,427.68	2,435,796.78	3,027,811.67
,55	99,521.14	112,676.00	233,862.82	128,589.94						
,33	1,129,602.19	1,192,200.84	1,161,103.36	1,122,771.61	Deferred Liabilities					
,81	31,657.15	34,527.88	37,985.43	60,446.22	Maryland Electric Rys. Co., Bond Issue.	4,946,000.00	-	-	-	-
,51	2,066,270.30	1,857,459.75	2,050,382.80	1,963,611.89	Other Deferred Liabilities	-	-	-	264,485.59	616,993.69
					Total Deferred Liabilities	4,946,000.00	-	-	264,485.59	616,993.69
,00										
,80		6.19	12.38		Unadjusted Credits					
,86	1,800,958.45	1,870,080.06	1,938,701.67	1,946,356.07	Tax Liability	442,239.51	294,796.30	297,608.86	367,571.44	188,887.65
	40,000.00	79,600.00	118,775.00	118,775.00	Insurance and Casualty Reserves			6,666.00	6,522.50	7,772.77
	1,650.00	5,025.00	10,200.00	10,200.00	Operating Reserves	365,317.15	359,485.55	326,910.63	302,160.97	241,888.36
		59,400.00	98,575.00	137,350.00	Accrued Depreciation Road and Equipment	1,167,374.92	1,195,693.32	1,303,799.08	1,520,541.26	1,412,772.72
		2,500.00	6,740.00	12,795.00	Other Unadjusted Credits	785,929.42	1,326,546.31	1,335,936.11	1,565,918.69	1,566,488.86
,16	96,892.61	96,892.61	20,417.08	20,417.08	Total Unadjusted Credits	2,770,861.00	3,176,521.48	3,270,242.65	3,962,715.06	3,177,655.97
,23	54,621.04	117,600.48	131,145.79	151,694.62						
					Corporate Surplus					
,07	2,024,122.10	2,231,104.34	2,324,566.92	2,397,589.77	Miscellaneous Fund Reserves	383,280.00	590,780.00	590,780.00	645,750.00	645,750.00
,39	1,605,161.00	1,606,661.00	2,295,940.81	2,295,940.81						
,68	418,961.10	624,443.34	28,626.11	101,648.96	Profit and Loss	1,844,963.58	1,980,817.52	2,005,472.98	2,020,863.40	1,854,196.18
,15	-	-	-	-	Total Corporate Surplus	2,228,243.58	2,571,597.52	2,596,252.98	2,666,613.40	2,499,946.18
,83	418,961.10	624,443.34	28,626.11	101,648.96						
,95	39,729.28	9,382.54	113,815.50	92,030.00						
,81	865,190.53	805,872.21	746,877.82	782,652.15						
,11	108,067.42	121,226.57	1,076,068.63	1,196,328.42						
,76	331,131.45	837,280.06	886,454.73	929,625.54						
,63	1,344,134.68	1,773,761.40	2,823,210.68	3,000,636.11						
,98	86,001,394.54	87,213,823.31	87,952,510.83	88,357,021.76	TOTAL	90,984,944.98	86,001,394.54	87,213,823.31	87,952,510.83	88,357,021.76

THE [illegible] ELECTRIC RAILWAYS COMPANY

COMPARATIVE BALANCE SHEETS - YEARS ENDED DECEMBER 31, 1923, 1924, 1925 AND 1926,

AND AT AUG. 31, 1927.

ASSETS	Dec. 31, 1923	Dec. 31, 1924	Dec. 31, 1925	Dec. 31, 1926	Aug. 31, 1927
Road and Equipment					
In Road and Equipment A/c	$ 7,206,777.13	$ 8,034,359.58	$ 8,164,416.24	$ 7,762,214.36	$ 7,744,944.82
In 7½% Sinking Fund A/c	1,170,668.80	1,199,908.12	1,227,138.12	986,241.05	986,241.05
In Depreciation Fund A/c	-	-	44,527.03	86,005.48	123,797.06
Total Road and Equipment	8,377,445.93	9,234,267.70	9,436,081.39	8,834,460.91	8,854,982.93
Sinking and Depreciation Funds					
1½% General Sinking Fund Cash Balance	129.55	532.67	818.01	606.64	211.64
7½% Special Sinking Fund	260,362.61	321,258.15	358,156.47	426,778.98	434,440.28
Series "A" Sinking Fund	-	100.00	175.00	350.00	350.00
Series "B" " "	-	150.00	25.00	200.00	200.00
Series "A" Depreciation Fund	-	-	14,872.97	19,309.52	26,347.94
Series "B" " "	-	-	2,500.00	-	-
Total Sinking & Deprec. Funds	260,492.16	322,040.82	376,547.45	447,244.24	461,549.86
Lessors Interest in U.R.& E. Co. Leases (Book Value)	-	1,164,000.00	1,164,000.00	1,164,000.00	1,164,000.00
Current Assets					
Cash		128,384.40			-
U. R. & E. Co. Excess rent over Int.		5,934.50	5,934.50	5,934.50	9,890.84
		134,318.90	5,934.50	5,934.50	9,890.84
Unadjusted Debits					
Work in Progress	-	18,996.50	-	-	-
Property Released, Sold, etc.	1,167,078.39	1,605,161.00	1,606,661.00	2,295,940.81	2,295,940.81
U. R. & E. Co. Discount on Funded Debt, etc.	468,700.00	698,443.66	716,559.87	736,088.68	743,906.30
Total Unadjusted Debits	1,635,778.39	2,322,601.16	2,323,220.87	3,032,029.49	3,039,847.11
TOTAL	10,273,716.48	13,177,228.58	13,305,784.21	13,483,669.14	13,530,270.74

LIABILITIES	Dec. 31, 1923	Dec. 31,
Capital Stock	$ 410,000.00	$ 1,573,
Grants in Aid of Construction	90,259.45	90,
Funded Debt	6,946,000.00	11,06
Less amount retired through Sinking Funds	1,441,000.00	1,59
	5,505,000.00	9,475,
Current Liabilities		
Notes Payable	1,068,000.00	75,
Accounts Payable	105,767.69	25,
Total Current Liabilities	1,173,767.69	100,
Sinking and Depreciation Fund Reserves		
1½% General Sinking Fund	1,357,511.80	
7½% Special Sinking Fund	1,715,816.88	1,800,
Series "A" " "	-	40,
Series "B" " "	-	1,
Series "A" Depreciation Fund	-	
Series "B" " "	-	
Total Sinking Fund Reserves	3,073,328.68	1,842,
Unadjusted Credits		
U. R. & E. Co. Discount on Bonds Purchased through Sinking Funds	83,617.75	89,
U. R. & E. Co. Dividends Accrued	-	5,
Total Unadjusted Credits	83,617.75	95,
Profit and Loss (Deficit)	✗ 62,257.09	
TOTAL	10,273,716	13,177,

(✗) Deficit.

People's Counsel Exhibit No. 52 Sheet 3.

THE [illegible] ELECTRIC RAILWAYS COMPANY

COMPARATIVE BALANCE SHEETS - YEARS ENDED DECEMBER 31, 1923, 1924, 1925 AND 1926,

AND AT AUG. 31, 1927.

[illegible]923	Dec. 31, 1924	Dec. 31, 1925	Dec. 31, 1926	Aug. 31, 1927
[illegible]7.13	$ 8,034,359.58	$ 8,164,416.24	$ 7,762,214.38	$ 7,744,944.82
[illegible].80	1,199,908.12	1,227,138.12	986,241.05	986,241.05
	-	44,527.03	86,005.48	123,797.06
[illegible].93	9,234,267.70	9,436,081.39	8,834,460.91	8,854,982.93
[illegible].55	532.67	818.01	606.64	211.64
[illegible].61	321,258.15	358,156.47	426,778.08	434,440.28
	100.00	175.00	350.00	350.00
	150.00	25.00	200.00	200.00
	-	14,872.97	19,309.52	26,347.94
	-	2,500.00	-	-
[illegible]2.16	322,040.82	376,547.45	447,244.24	461,549.86
	1,164,000.00	1,164,000.00	1,164,000.00	1,164,000.00
	128,384.40			-
	5,934.50	5,934.50	5,934.50	9,890.84
	134,318.90	5,934.50	5,934.50	9,890.84
	18,996.50	-	-	-
[illegible]8.39	1,605,161.00	1,606,661.00	2,295,940.81	2,295,940.81
[illegible]0.00	698,443.66	716,559.87	736,088.68	743,906.30
[illegible]8.39	2,322,601.16	2,323,220.87	3,032,029.49	3,039,847.11
[illegible]6.48	13,177,228.58	13,305,784.21	13,483,669.14	13,530,270.74

LIABILITIES	[illegible] 31, 1923	Dec. 31, 1924	Dec. 31, 1925	Dec. 31, 1926	Aug. 31, 1927
Capital Stock	$ 410,000.00	$ 1,573,800.00	$ 1,573,800.00	$ 1,573,800.00	$1,573,800.00
Grants in Aid of Construction	90,259.45	90,259.45	90,259.45	90,259.45	[illegible]
Funded Debt	6,946,000.00	11,069,500.00	11,197,500.00	11,336,000.00	11,561,500.00
Less amount retired through Sinking Funds	1,441,000.00	1,594,000.00	1,754,000.00	1,923,000.00	[illegible]
	5,505,000.00	9,475,500.00	9,443,500.00	9,413,000.00	[illegible]
Current Liabilities					
Notes Payable	1,068,000.00	75,000.00	75,000.00	75,000.00	[illegible]
Accounts Payable	105,767.69	25,001.47	4,222.51	50,403.39	[illegible]
Total Current Liabilities	1,173,767.69	100,001.47	79,222.51	125,403.39	[illegible]
Sinking and Depreciation Fund Reserves					
1½% General Sinking Fund	1,357,511.80	9.64	6.19	12.38	-
7½% Special Sinking Fund	1,715,816.88	1,800,997.02	1,870,080.06	1,938,701.67	[illegible]
Series "A" " "	-	40,000.00	79,600.00	118,775.00	[illegible]
Series "B" " "	-	1,650.00	5,025.00	10,200.00	[illegible]
Series "A" Depreciation Fund	-	-	59,400.00	98,575.00	[illegible]
Series "B" " "	-	-	2,500.00	6,740.00	[illegible]
Total Sinking Fund Reserves	3,073,328.68	1,842,656.66	2,016,611.25	2,173,004.05	[illegible]
Unadjusted Credits					
U. R. & E. Co. Discount on Bonds Purchased through Sinking Funds	83,617.75	89,076.50	96,456.50	102,267.75	[illegible]
U. R. & E. Co. Dividends Accrued	-	5,934.50	5,934.50	5,934.50	[illegible]
Total Unadjusted Credits	83,617.75	95,011.00	102,391.00	108,202.25	[illegible]
Profit and Loss (Deficit)	ø 62,257.09				
TOTAL	10,273,716.[illegible]	13,177,228.58	13,305,784.21	13,483,669.14	13,530,270.74

(ø) Deficit.

People's Counsel Exhibit No. 52 Sheet 4.

THE MARYLAND ELECTRIC RAILWAYS COMPANY
BALTIMORE, CHESAPEAKE POINT AND CHESAPEAKE RAILWAY COMPANY
BALTIMORE, HALETHORPE AND SEVERN RAILWAY COMPANY.

CONSOLIDATED BALANCE SHEET AT DECEMBER 31, 1923

ASSETS	The Md.Elec. Railways Co.	B. Sp.Pt. & Ches. Ry. Co.	Balto. Hale-thorpe & Blk. Ry. Co.	Consolidated TOTAL
Road and Equipment	$3,595,007.68	$3,489,710.04	$122,060.01	$ 7,206,777.13
" " " in Special Funding Fund	1,170,668.80			1,170,668.80
Total Road and Equipment	4,765,675.88	3,489,710.04	122,060.01	8,377,445.93
Sinking Funds				
1½% General	129.55			129.55
7% Special	260,362.61			260,362.61
Total Sinking Funds	260,492.16			260,492.16
Unadjusted Debits				
Property Released, Sold, etc.	1,167,078.39			1,167,078.39
U.R.& E.Co. Discount on Funded Debt, etc.	468,700.00			468,700.00
Total Unadjusted Debits	1,635,778.39			1,635,778.39
TOTAL ASSETS	6,661,946.43	3,489,710.04	122,060.01	10,273,716.48
LIABILITIES				
Capital Stock (Common) . .	-	400,000.00	10,000.00	410,000.00
Grants in Aid of Construction		90,259.45		90,259.45
Funded Debt	4,946,000.00	2,000,000.00		6,946,000.00
Less Amount retired through Sinking Fund	1,441,000.00			1,441,000.00
	3,505,000.00	2,000,000.00		5,505,000.00
Current Liabilities				
Notes Payable	-	918,000.00	150,000.00	1,068,000.00
Accounts Payable	-	81,450.59	24,317.10	105,767.69
Total Current Liabilities	-	999,450.59	174,317.10	1,173,767.69
Sinking Fund Reserves				
1½% General	1,357,511.80			1,357,511.80
7% Special	1,715,816.88			1,715,816.88
Total Sinking Fund Reserves	3,073,328.68	-	-	3,073,328.68
Unadjusted Credits				
U.R.& E.Co. For Discount on bonds Purchased through Sinking Fund	83,617.75			83,617.75
Total Unadjusted Credits	83,617.75	-	-	83,617.75
TOTAL LIABILITIES	6,661,946.43	3,489,710.04	184,317.10	10,335,973.57
Profit and Loss Deficit			62,257.09	62,257.09
TOTAL	6,661,946.43	3,489,710.04	122,060.01	10,273,716.48

RESULTS OF OPERATIONS UNDER SUNDAY PASS IN CINCINNATI, OHIO

Sunday Pass put into effect in November, 1926.

Revenue Passengers in 1926	89,493,000
Revenue Passengers January - October, 1927	87,943,000

Average Revenue Passengers per day -

	1926	1927
268 Week Days	256,860	266,550
45 Sundays	163,900	197,700

Number of Sunday Passes Sold	12,000
Average Fare per Pass Rider	5-1/4¢

TELEGRAM TO MR. GILMAN - NOVEMBER 28, 1927.

E D GILMAN
DIRECTOR OF PUBLIC UTILITIES
CINCINNATI OHIO

HAVE REVENUE PASSENGERS ON CINCINNATI RAILWAYS INCREASED OVER NINETEEN TWENTY SIX STOP HOW DOES SUNDAY RIDING COMPARE STOP PLEASE QUOTE AVAILABLE FIGURES STOP IS SUNDAY PASS POPULAR AND WHAT IS EFFECT ON RIDING AND REVENUE STOP PLEASE WIRE COLLECT AND ACCEPT OUR THANKS

H CARL WOLF
CHIEF ENGINEER, PUBLIC SERVICE COMMISSION OF MARYLAND

MR. GILMAN'S REPLY - NOVEMBER 28, 1927.

CARL WOLF, CHIEF ENGINEER,
PUBLIC SERVICE COMMISSION OF MARYLAND
BALTIMORE MD.

REVENUE PASSENGERS ON STREET CARS IN TWENTY SIX WERE EIGHTY NINE MILLION FOUR HUNDRED AND NINETY THREE THOUSAND STOP IN TWENTY SEVEN JANUARY TO OCTOBER INCLUSIVE EIGHTY SEVEN MILLION NINE HUNDRED AND FORTY THREE THOUSAND ST P JANUARY TO OCTOBER INCLUSIVE IN TWENTY SIX AVERAGE PASSENGERS PER WEEK DAY TWO HUNDRED AND FIFTY SIX THOUSAND EIGHT HUNDRED AND SIXTY AVERAGE PASSENGERS PER SUNDAY ONE HUNDRED AND SIXTY THREE THOUSAND NINE HUNDRED STOP IN TWENTY SEVEN AVERAGE PASSENGERS PER WEEK DAY TWO HUNDRED AND SIXTY SIX THOUSAND FIVE HUNDRED AND FIFTY AVERAGE PASSENGERS PER SUNDAY ONE HUNDRED AND NINETY SEVEN THOUSAND SEVEN HUNDRED STOP TWO HUNDRED SIXTY EIGHT WEEK DAYS AND FORTY FIVE SUNDAYS FIGURED IN EACH YEAR STOP SUNDAY PASS EFFECTIVE NOVEMBER TWENTY SIX STOP ABOUT TWELVE THOUSAND PASSES SOLD EVERY SUNDAY AVERAGE COST ABOUT FIVE AND ONE FOURTH CENTS PER RIDE REGULAR FARE EIGHT AND ONE THIRD CENTS STOP REVENUE PER CAR MILE OPERATED HAS INCREASED SLIGHTLY STOP WILL SEND YOU MORE DETAIL FIGURES IN A FEW DAYS.

EDGAR DON GILMAN
DIRECTOR PUBLIC UTILITIES CINCINNATI OHIO.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Value of Service in 1927 Compared to Value Found by Commission in January, 1919.

Item	January, 1919		October, 1927	
	Actual	Index	Actual	Index
Platform Wages	45¢	100	53¢	118
Operating Expenses per Car Mile	23.3¢ (a)	100	28.6¢ (b)	123
U.S.B.L. Cost of Living - Baltimore	184	100	177	96
U.S.B.L. All Commodities - Wholesale	195	100	146	75
Average of four factors		100		103

(a) Average for years 1918 and 1919

(b) Average for 1st ten months of 1927

Value of Service Found
by Commission in January 1919 - - - - - - - - - - - 6¢

Value of Service in October, 1927 based on

Platform Wages	7.1¢
Operating Expenses per Car Mile	7.4
U.S.B.L. Cost of Living - Baltimore	5.8
U.S.B.L. All Commodities - Wholesale	4.5
Average of four factors	6.2¢

Note: In 1924 the Commission extended the fare zones and added 1/2¢ to the rate to take care of these extensions. This amount should be added to above figures for value of service.

HALETHORPE EXHIBITS—TEN CENT FARE CASES.

EMERGENCY RATE HEARINGS,
September, 1927.

PERMANENT RATE HEARINGS,
October, 1927.

Exhibit No.	Description	Filed In Evidence
A	Chart Showing Length of Rides Within and Without City Limits for One and Two Fares on the Following Car Lines: 3, 14, 23, 8, 15, 35, 28, 26, 19, 32 and 5	9-13-27
B	Tabulation Showing Mileage for First Fare, Second Fare and Total Fare over the Following Lines: 34, 14, 23, 8, 15, 35, 28, 26, 19, 32 and 5	9-13-27
C	Map Showing Location of End of First Fare Zone on Various Suburban Car Lines in Relation to Center of City (Baltimore & Charles Sts.)	11-22-27
D	Comparative Airline Mileage Chart. Baltimore Suburban Car Lines (Mileages scaled from Md. Geological Survey Map of Baltimore County dated 1924	11-22-27
E	Comparative Airline Mileage Chart. One Fare Distance from Baltimore and Charles Sts. Compared with Total Halethorpe Line Two Fare District on the following Car Lines: 3, 14, 23, 8, 15, 35, 28, 26, 19, 32 and 5	11-22-27
F	List of Manufacturers Employing more than One Hundred (100) People Served Conveniently by No. 3 Car Line Enroute from Halethorpe Before Reaching Baltimore and Howard Streets	11-22-27

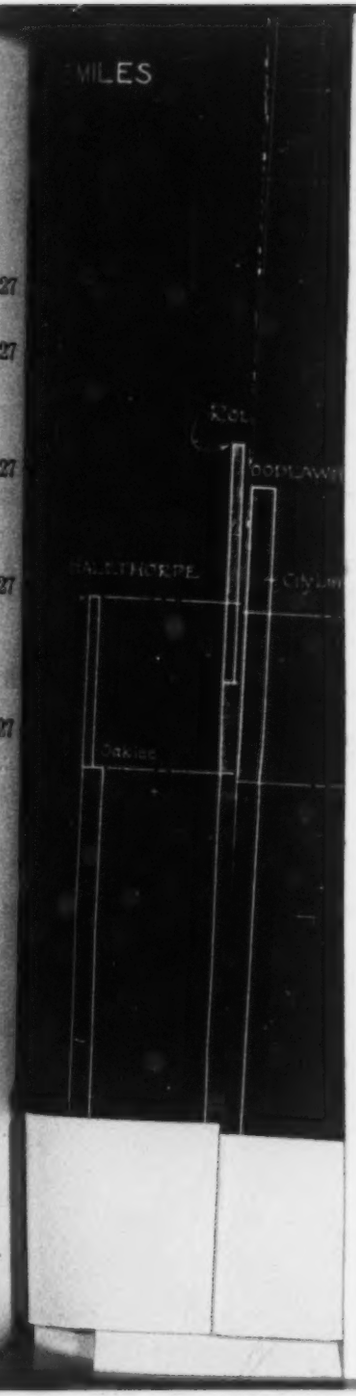
G List of Larger Manufacturing Concerns Employing More Than One Hundred (100) People Grouped in Sections of Plant Location 11-22-27

H Average Airline Distance of Twelve City-Suburban Car Lines, 6.00 Miles 11-22-27

I Comparative Annual Cost of Street Railway Transportation From Halethorpe and Twelve Other City-Suburban Car Lines 11-23-27

J Map from Chamber of Commerce of Portland, Oregon, showing measurements taken from airline from junction one-third of a mile from center of the city 11-23-27

K Chart showing the Number of Dwellings Constructed Before and After One Fare Extension to Dundalk Junction on No. 26 Line and Eastern Avenue & Forty-fifth Street on No. 23 Line 11-23-27



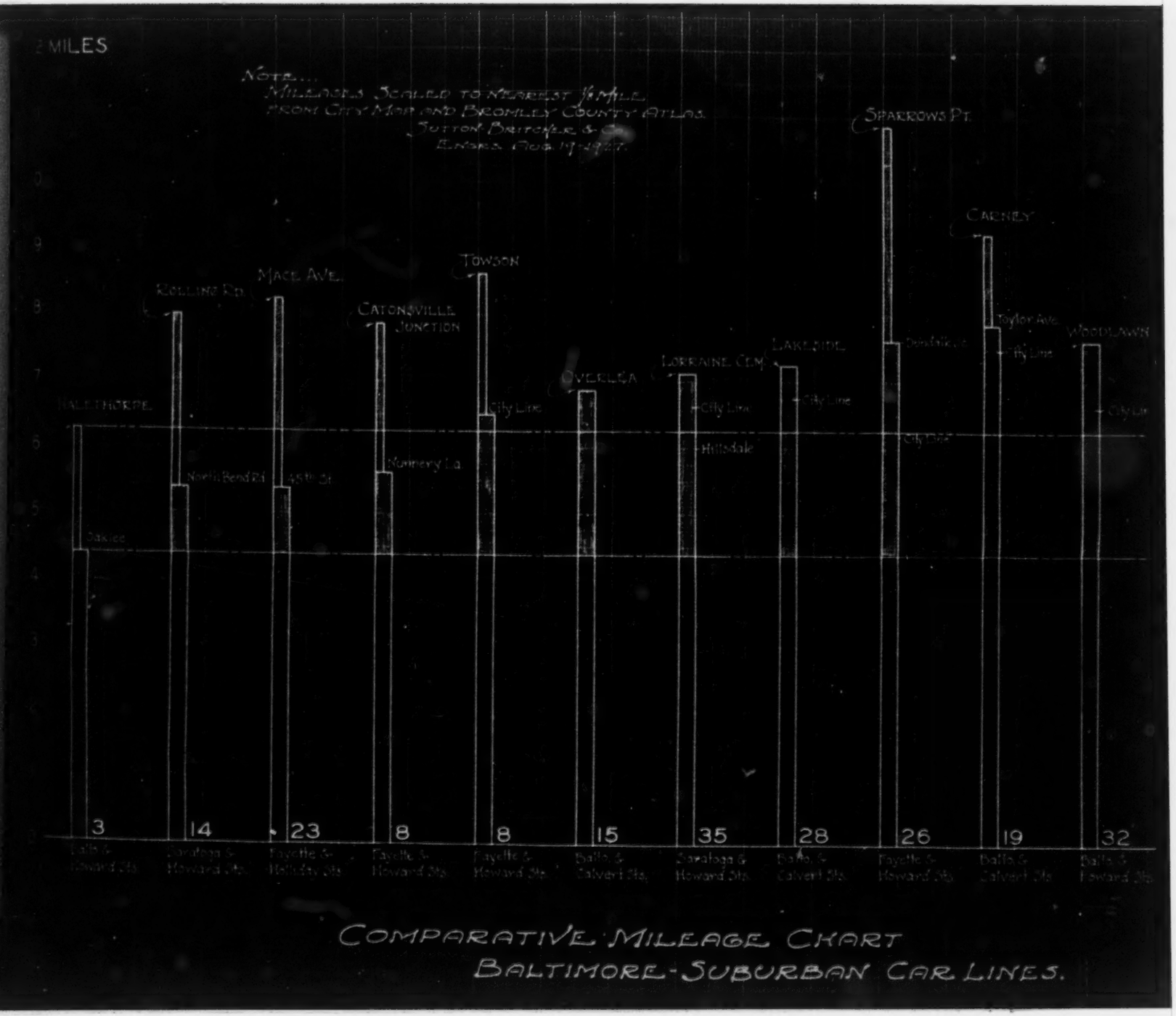
Larger Manufacturing Concerns
ying More Than One Hundred
People Grouped in Sections of
Location 11-22-27

Airline Distance of Twelve City-
ban Car Lines, 6.00 Miles..... 11-22-27

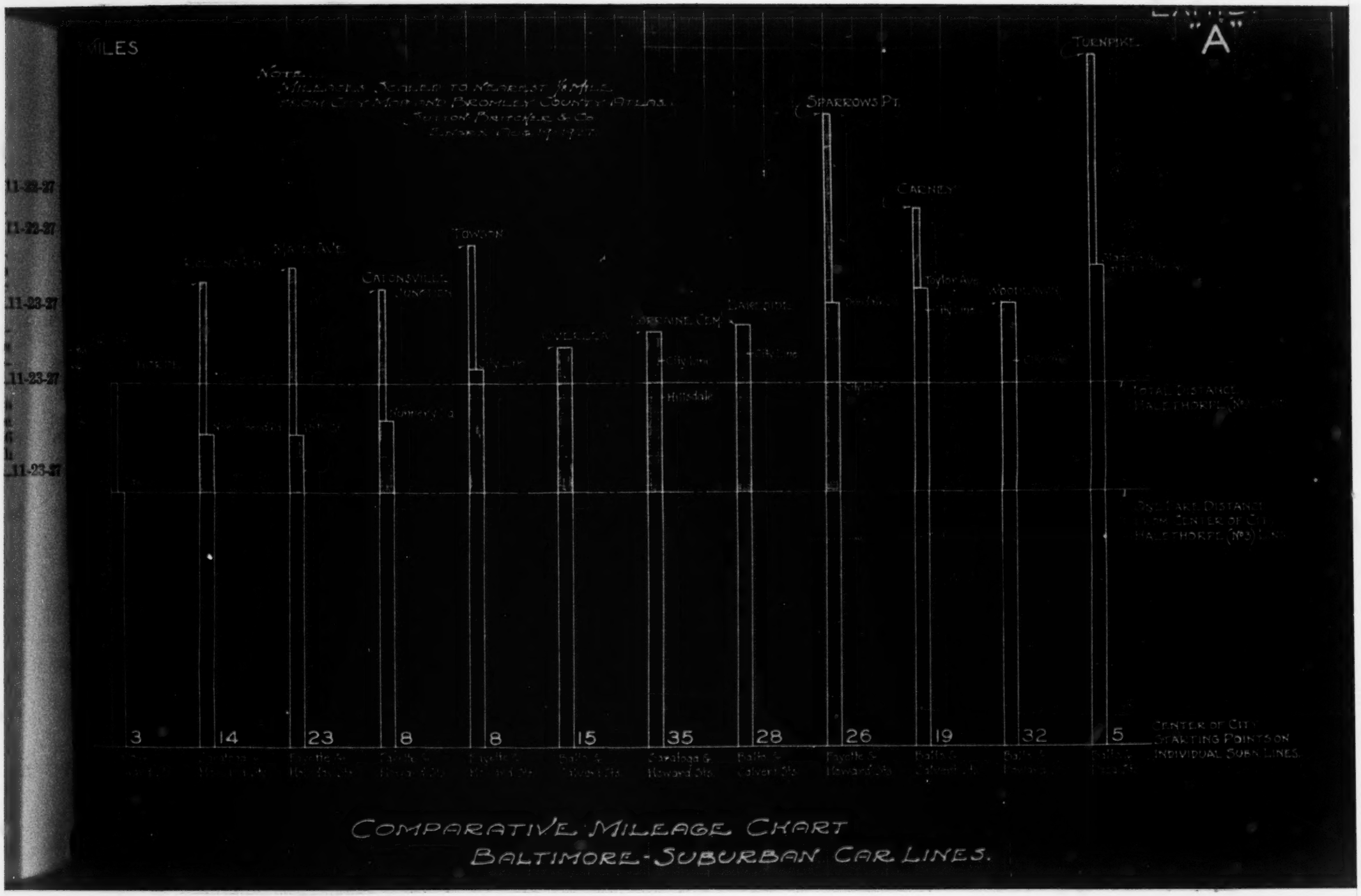
tive Annual Cost of Street Rail-
Transportation From Halethorpe
welve Other City-Suburban Car
..... 11-23-27

m Chamber of Commerce of Port-
Oregon, showing measurements
from airline from junction one-
f a mile from center of the city..... 11-23-27

howing the Number of Dwellings
ucted Before and After One Fare
ion to Dundalk Junction on No. 26
nd Eastern Avenue & Forty-fifth
on No. 23 Line 11-23-27



COMPARATIVE MILEAGE CHART
BALTIMORE-SUBURBAN CAR LINES.



COMPARATIVE MILEAGE CHART
BALTIMORE-SUBURBAN CAR LINES.

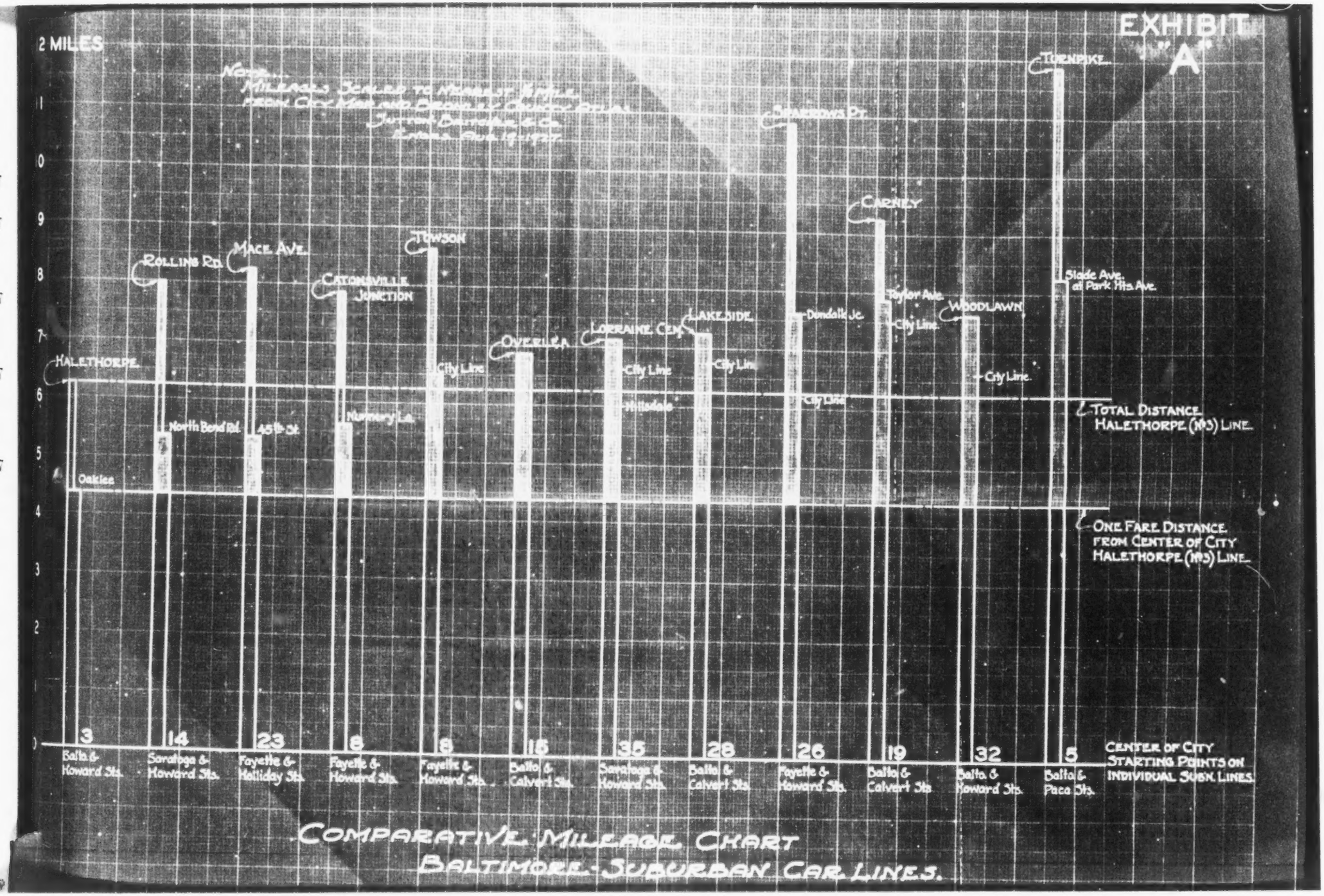


EXHIBIT "A"
2 MILES
1
0
9
8
7
6
5
4
3
2
1
0
-22-27
-22-27
1-23-27
1-23-27
1-23-27
HALETHORPE
Oakley
ROLLING RD.
North Bend Rd.
MACE AVE.
45th St.
CATONSVILLE JUNCTION
Nunnery La.
TOWSON
City Line
OVERLEA
LORRAINE CEM.
City Line
Hillsdale
LAKESIDE
City Line
Dundalk Jc.
City Line
CARNEY
Taylor Ave.
City Line
WOODLAWN
City Line
TURNPIKE
Slade Ave. at Park Hts. Ave.
TOTAL DISTANCE HALETHORPE (No 3) LINE
ONE FARE DISTANCE FROM CENTER OF CITY HALETHORPE (No 3) LINE
3
Balto. & Howard Sts.
14
Saratoga & Howard Sts.
23
Fayette & Holliday Sts.
8
Fayette & Howard Sts.
8
Fayette & Howard Sts.
15
Balto. & Calvert Sts.
35
Saratoga & Howard Sts.
28
Balto. & Calvert Sts.
26
Fayette & Howard Sts.
19
Balto. & Calvert Sts.
32
Balto. & Howard Sts.
5
Balto. & Paca Sts.
CENTER OF CITY STARTING POINTS ON INDIVIDUAL SUBN. LINES.
COMPARATIVE MILEAGE CHART
BALTIMORE-SUBURBAN CAR LINES.

EXHIBIT "B" TABULATION OF EXHIBIT "A"

NOTE... MILEAGES SCALED TO NEAREST ½ MILE FROM CITY MAP AND BROMLEY COUNTY ATLAS. SUTTON-BRITCHER & CO. ENGRS. AUG. 19-1927.

LINE		FROM	TO		A			B			C			D		
					LINE MILEAGE			ONE FARE DISTANCES FROM CENTER OF CITY COMPARED WITH HALETHORPE LINE FROM CENTER OF CITY TO OAKLEE.			SECOND FARE DISTANCES COMPARED WITH HALETHORPE LINE SECOND FARE DISTANCE.			TOTAL FARE DISTANCE TWO FARE LINES COMPARED WITH TOTAL HALETHORPE LINE TWO FARE DISTANCE		
No	NAME	(NEAR CENTER OF CITY)	END OF 1st FARE	END OF 2nd FARE	FIRST FARE	SECOND FARE	TOTAL FARE	EXCESS MILEAGE	% EXCESS	AV. % EXCESS	EXCESS MILEAGE	% EXCESS	AV. % EXCESS	EXCESS MILEAGE	% EXCESS	
3	HALETHORPE	BALTO & HOWARD STS.	OAKLEE	HALETHORPE	4⅜	1⅞	6¼			57			38			
14	ELLICOTT CITY	SARATOGA & HOWARD STS.	NORTH BEND RD.	ROLLING RD.	5⅜	2⅝	8.	1.	23		¾	40		1¾	27	
23	MIDDLE RIVER	FAYETTE & HOLLIDAY STS.	FORTY-FIFTH ST.	MACE AVE.	5⅜	2⅞	8¼	1.	23		1.	53		2.	32	
8	CATONSVILLE	FAYETTE & HOWARD STS.	NONNERY LA.	CATONS. JC.	5⅝	2¼	7⅞	1¼	29		⅜	20		1⅝	26	
8	TOWSON	FAYETTE & HOWARD STS.	CITY LINE	TOWSON	6½	2⅜	8⅝	2⅛	49		¼	13		2⅜	38	
15	OVERLEA	BALTO & CALVERT STS.	OVERLEA		6⅞			2½	57							
35	HILLSDALE	SARATOGA & HOWARD STS.	LORRAINE CEM.		7⅛			2¾	63							
28	LAKESIDE	BALTO & CALVERT STS.	LAKESIDE		7¼			2⅞	66							
26	SPARROWS PT.	FAYETTE & HOWARD STS.	DUNDALK JC.	SPARROWS PT.	7⅞	3¼	10⅞	3¼	74		1⅛	73		4⅜	74	
19	HAMILTON	BALTO & CALVERT STS.	TAYLOR AVE.	CARNEY	7⅞	1⅞	9¼	3½	80		−½	−27		3.	48	

From City Map and Dromley County Atlas.
Sutton-Britcher & Co.
Engrs. Aug. 19-1927.

LINE		FROM	TO		LINE MILEAGE			ONE FARE DISTANCES FROM CENTER OF CITY COMPARED WITH HALETHORPE LINE FROM CENTER OF CITY TO OAKLEE.			SECOND FARE DISTANCES COMPARED WITH HALETHORPE LINE SECOND FARE DISTANCE.			TOTAL FARE DISTANCES TWO FARE LINES COMPARED WITH TOTAL HALETHORPE LINE TWO FARE DISTANCE.		
No	NAME	(NEAR CENTER OF CITY)	END OF 1ST FARE	END OF 2ND FARE	FIRST FARE	SECOND FARE	TOTAL FARE	EXCESS MILEAGE	% EXCESS	AV. % EXCESS	EXCESS MILEAGE	% EXCESS	AV. % EXCESS	EXCESS MILEAGE	% EXCESS	
3	HALETHORPE	BALTO & HOWARD STS.	OAKLEE	HALETHORPE	4⅜	1⅞	6¼			57			38			
14	ELLICOTT CITY	SARATOGA & HOWARD STS.	NORTH BEND RD.	ROLLING RD.	5⅜	2⅝	8.	1.	23		¾	40		1¾	27	
23	MIDDLE RIVER	FAYETTE & HOLLIDAY STS.	FORTY-FIFTH ST.	MACE AVE.	5⅜	2⅞	8¼	1.	23		1.	53		2.	32	
8	CATONSVILLE	FAYETTE & HOWARD STS.	NONNERY LA.	CATONS. JC.	5⅝	2¼	7⅞	1¼	29		⅜	20		1⅝	26	
8	TOWSON	FAYETTE & HOWARD STS.	CITY LINE	TOWSON	6½	2⅜	8⅝	2⅛	49		¼	13		2⅜	38	
15	OVERLEA	BALTO & CALVERT STS.	OVERLEA		6⅞			2½	57							
35	HILLSDALE	SARATOGA & HOWARD STS.	LORRAINE CEM.		7⅛			2¾	63							
28	LAKESIDE	BALTO & CALVERT STS.	LAKESIDE		7¼			2⅞	66							
26	SPARROWS PT.	FAYETTE & HOWARD STS.	DUNDALK JC.	SPARROWS PT.	7⅝	3¼	10⅞	3¼	74		1⅛	73		4⅜	74	
19	HAMILTON	BALTO & CALVERT STS.	TAYLOR AVE.	CARNEY	7⅞	1⅛	9¼	3½	80		-½	-27		3.	48	
32	WOODLAWN	BALTO & HOWARD STS.	WOODLAWN		7⅞			3¼	74							
5	PIKESVILLE	BALTO & PACA STS.	PIKES. & SLADE	TURNPIKE	8⅛	3⅛	11⅜	3⅞	89		1¾	93		5⅝	90	

ABULATION OF EXHIBIT A

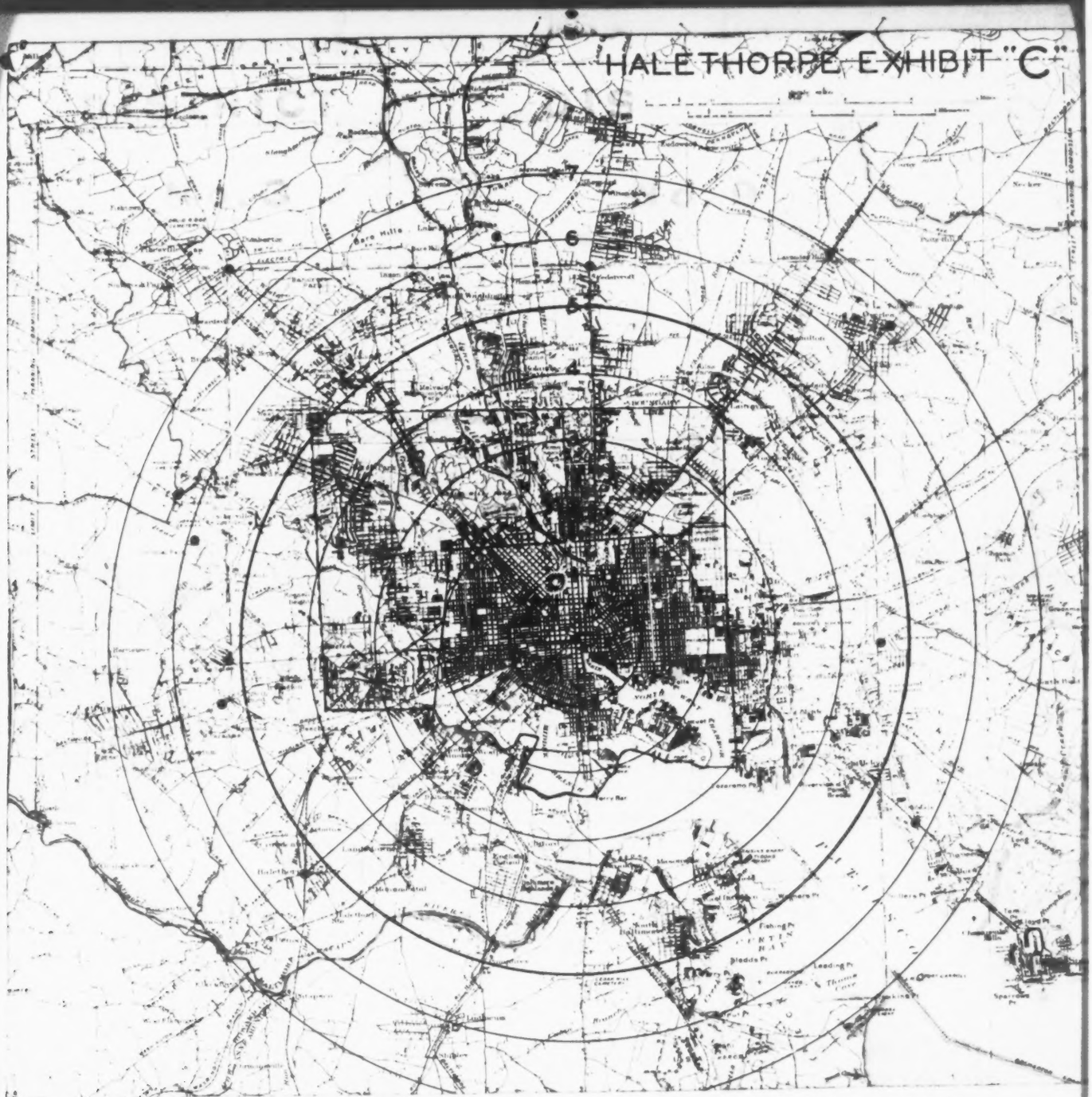
REST ½ MILE
LEY COUNTY ATLAS
TCHLER & Co.
FEB. 19-1927.

TO		A			B			C			D			E			F
		LINE MILEAGE			ONE FARE DISTANCES FROM CENTER OF CITY COMPARED WITH HALETHORPE LINE FROM CENTER OF CITY TO OAKLEE.			SECOND FARE DISTANCES COMPARED WITH HALETHORPE LINE SECOND FARE DISTANCE.			TOTAL FARE DISTANCES OF TWO FARE LINES COMPARED WITH TOTAL HALETHORPE LINE TWO FARE DISTANCE.			ONE FARE DISTANCES FROM CENTER OF CITY COMPARED WITH TOTAL HALETHORPE LINE TWO FARE DISTANCE.			CITY LINES EXTENDING INTO COUNTY ON ONE FARE.
	END OF 1ST FARE.	END OF 2ND FARE.	FIRST FARE	SECOND FARE	TOTAL FARE	EXCESS MILEAGE	% EXCESS	AV. % EXCESS	EXCESS MILEAGE	% EXCESS	AV. % EXCESS	EXCESS MILEAGE	% EXCESS	AV. % EXCESS	EXCESS MILEAGE	% EXCESS	AV. % EXCESS	MILES
	OAKLEE	HALETHORPE	4⅜	1⅞	6¼			57			38			48			10	
T.S.	NORTH BEND RD.	ROLLING RD.	5⅜	2⅝	8.	1.	23		¾	40		1¾	27		-⅞	-14		
T.S.	FORTY-FIFTH ST.	MACE AVE.	5⅜	2⅞	8¼	1.	23		1.	55		2.	32		-⅞	-14		
	NONNERY LA.	CATONS. JC.	5⅝	2¼	7⅞	1¼	29		⅜	20		1⅜	26		-⅝	-10		
S	CITY LINE	TOWSON	6½	2⅜	8⅝	2⅜	49		¼	13		2⅜	38		¼	4		
	OVERLEA		6⅞			2½	57								⅝	10		
TS.	LORRAINE CEM.		7⅛			2¾	63								⅞	14		½
S	LAKESIDE		7¼			2⅞	66								1.	16		½
T.S.	DUNDALK JC.	SPARROWS PT.	7⅞	3⅛	10⅞	3¼	74		1⅛	73		4⅜	74		1⅜	22		1⅜
	TAYLOR AVE.	CARNEY	7⅞	1⅜	9¼	3½	80		-½	-27		3.	48		1⅝	26		⅜
	WOODLAWN		7⅝			3½	74								1⅜	22		

As. 19-1927.

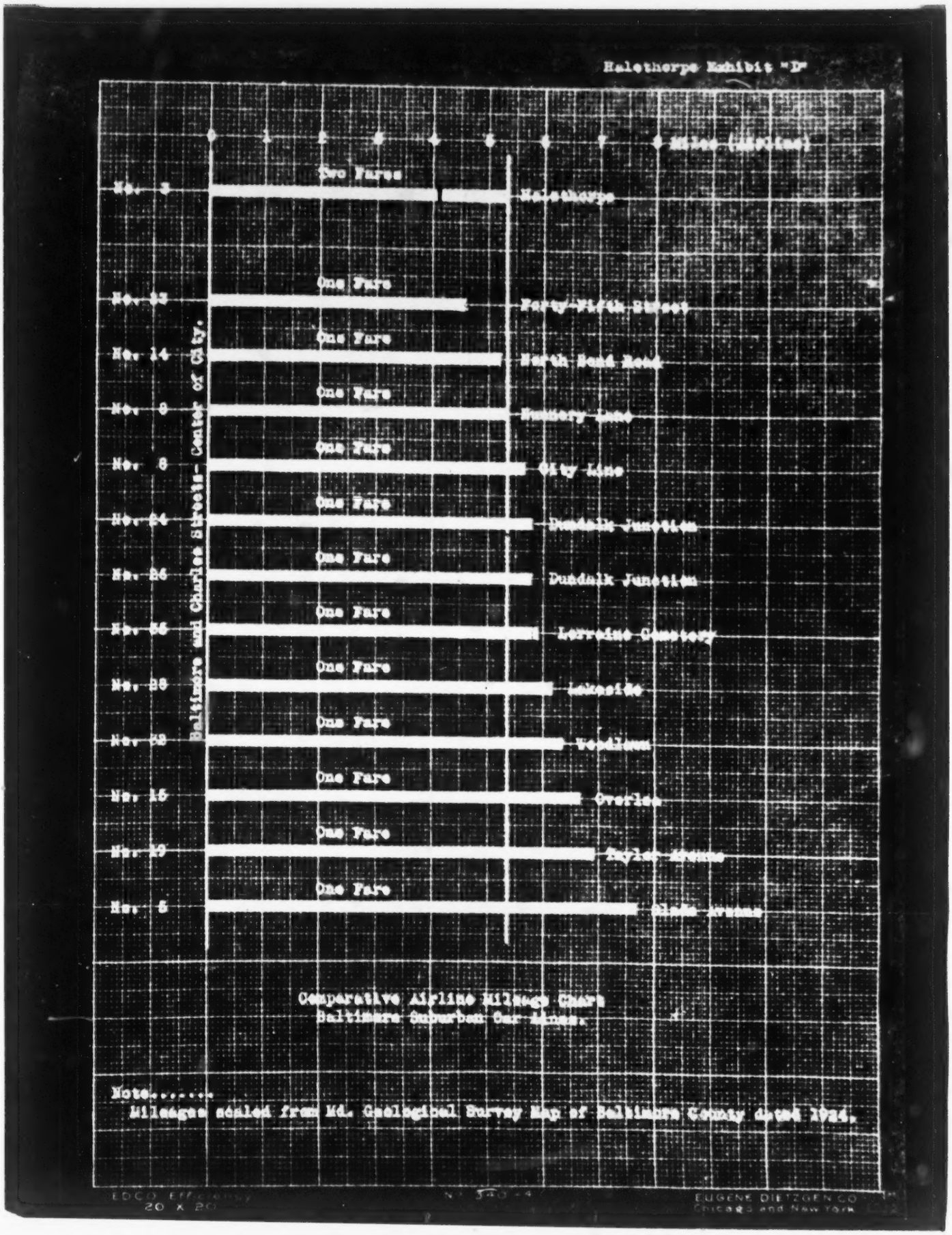
TO		LINE MILEAGE			CENTER OF CITY COMPARED WITH HALETHORPE LINE. FROM CENTER OF CITY TO OAKLEE.			COMPARED WITH HALETHORPE LINE. SECOND FARE DISTANCE.			TWO FARE LINES COMPARED WITH TOTAL HALETHORPE LINE. TWO FARE DISTANCE.			CENTER OF CITY COMPARED WITH TOTAL HALETHORPE LINE. TWO FARE DISTANCE.			EXTENDING INTO COUNTY ON ONE FARE.
END OF 1ST FARE.	END OF 2ND FARE.	FIRST FARE	SECOND FARE.	TOTAL FARE	EXCESS MILEAGE	% EXCESS	AV. % EXCESS	EXCESS MILEAGE	% EXCESS	AV. % EXCESS	EXCESS MILEAGE	% EXCESS	AV. % EXCESS	EXCESS MILEAGE	% EXCESS	AV. % EXCESS	MILES
OAKLEE	HALETHORPE	4⅜	1⅞	6¼			57			38			48			10	
NORTH BEND RD.	ROLLING RD.	5⅜	2⅝	8.	1.	23		¾	40		1¾	27		-⅞	-14		
FORTY-FIFTH ST.	MACE AVE.	5⅜	2⅞	8¼	1.	23		1.	53		2.	32		-⅞	-14		
NONNERY LA.	CATONS. JC.	5⅝	2¼	7⅞	1¼	29		⅜	20		1⅝	26		-⅝	-10		
CITY LINE	TOWSON	6½	2⅛	8⅝	2⅛	49		¼	13		2⅛	38		¼	4		
OVERLEA		6⅞			2½	57								⅝	10		
LORRAINE CEM.		7⅛			2¾	63								⅞	14		½
LAKESIDE		7¼			2⅞	66								1.	16		½
DUNDALK JC.	SPARROWS PT.	7⅝	3¼	10⅞	3¼	74		1⅛	73		4⅜	74		1⅜	22		1⅜
TAYLOR AVE.	CARNEY	7⅞	1⅜	9¼	3½	80		-½	-27		3.	48		1⅝	26		⅜
WOODLAWN		7⅝			3¼	74								1⅜	22		1.
PK. HTS. & SLADE AVES.	TOWSON	8¼	3⅜	11⅝	3⅞	89		1¾	93		5⅛	90		2.	32		

HALETHORPE EXHIBIT "C"



MAP SHOWING LOCATION OF END OF FIRST FARE ZONE ON VARIOUS SUBURBAN CAR LINES IN RELATION TO CENTER OF CITY (BALTIMORE & CHARLES STS.)

Haletherpe Exhibit "D"



Comparative Airline Mileage Chart
Baltimore Suburban Car Lines.

Note.....
Mileages scaled from Md. Geological Survey Map of Baltimore County dated 1924.

EDCO Efficiency
20 X 20
No. 540-4
EUGENE DIETZGEN CO.
Chicago and New York

Halethorpe Exhibit "E"

Line No.	Line Name	From Baltimore and Charles Streets to	Airline Distance	One Fare Distance from Baltimore & Charles Sts. compared with Total Halethorpe Line Two Fare Dist.		
				Excess Mileage	% Excess	Av. % Excess
3	Halethorpe	Halethorpe	5.35 Mi.			
23	Middle River	Forty-Fifth St.	4.60 Mi.	-0.75	-14.0	
14	Ellicott City	North end road	5.20 Mi.	-0.15	- 2.8	
8	Catonsville	Nunnery Lane	5.35 Mi.	0.00	0.0	
8	Towson	City Line	5.65 Mi.	0.30	5.6	
24	Riverview	Sundalk Junction	5.80 Mi.	0.45	8.4	
26	Sparrows Point	Sundalk Junction	5.80 Mi.	0.45	8.4	
35	Hillsdale	Lorraine Cemetery	5.90 Mi.	0.55	9.3	12.0
28	Lakeside	Lakeside	6.15 Mi.	0.80	15.0	
32	Woodlawn	Woodlawn	6.35 Mi.	1.00	18.7	
15	Overlea	Overlea	6.65 Mi.	1.30	24.3	
19	Hamilton	Taylor Avenue	6.90 Mi.	1.55	29.0	
5	Pikesville	Slade Avenue	7.65 Mi.	2.30	43.0	

List of Manufacturers employing more than One Hundred (100) people served conveniently by No. 3 Car Line enroute from Haletherpe before reaching Baltimore and Howard Streets.

1 Aetna Shirt Company,
112 West Redwood St.
2 Albrecht Company,
211 Sharp Street.
3 Alma Manufacturing Co.,
611 South Monroe St.
4 C. A. Applegarth Co.,
411 Camden Street.
5 B. & O. Mfg. Company,
40 South Paca St.
6 B. V. D. Company,
327 West Pratt St.
7 B. & O. R. R. Co.,
Mt. Clare Shops, Pratt St.
8 Bartlett-Hayward Co.,
200 Scott St.
9 Geo. Blome & Sons,
621 West Baltimore St.
10 Brigham Hopkins Co.,
409 West Redwood St.
11 Canton Box Company,
604 Portland St.
12 Central Overall Company,
107 South Hanover St.
13 Corkran-Hill Company,
Wilkens Avenue.
14 Dixon-Bartlett Company,
110 West Redwood St.
15 Emerson Drug Company,
Lombard & Eutaw Sts.
16 Geo. Franke Sons Co.,
112 South Eutaw St.
17 Gans Brothers,
102 South Hanover St.
18 Globe Brewing Co.,
312 South Hanover St.
19 Haas Tailoring Co.,
Paca & Redwood Sts.
20 Hanover Shirt Co.,
120 South Hanover St.
21 Heyward-Wakefield,
113 West Conway St.
22 Hobbs-Francis Co.,
410 West Lombard St.
23 Michael Holzman & Co.,
109 South Hanover St.
24 Hub Tailoring Co.,
641 Washington Blvd.
25 Philip Kahn & Co.,
16 South Eutaw St.
26 C. D. Kenny Co.,
520 South Eutaw St.
27 Kramer-Kesting Co.,
113 South Hanover St.
28 L. S. Levy & Sons,
Paca & Redwood Sts.
29 Lion Brothers Company,
22 South Poppleton St.
30 P. Lorillard Company,
420 West Lombard St.
31 Marlboro Shirt Company,
Paca & Lombard Sts.
32 Matthews Brothers,
115 Hopkins Place.
33 Miller Safe Company,
Wilkens Avenue.
34 P. & H. Norton Advertising Co.,
222 South Howard St.
35 Oppenheim-Oberndorf & Co.,
McHenry & Pulaski Sts.
36 Pearl Rajuna Co.,
36 South Paca St.,
37 Phoenix Rud Company,
Monroe & Eagle Sts.
38 Read Drug & Chemical Co.,
20 South Howard St.
39 Regutta Manufacturing Co.,
Eutaw & Lombard Sts.
40 Robert Reis & Co.,
637 West Baltimore St.
41 A. H. Rettberg, Inc.,
Union Stock Yards.
42 Rosenbloom & Benjamin,
25 South Hanover St.
43 A. Schoeneman,
412 West Redwood St.
44 S. S. Sexton Stove Mfg. Co.,
500 West Conway Street.
45 Sharp & Dohme,
301 West Pratt St.
46 Henry Sonneborn & Co.,
Pratt & Paca Sts.
47 Southern Home Co.,
633 West Pratt St.
48 Standard Overall Co.,
701 West Pratt St.
49 Strouse-Baer Co.,
Eutaw & Redwood Sts.
50 Swift & Company,
Eutaw & Camden Sts.
51 Nobt. Tubman & Co.,
113 West Lombard St.
52 Vourwell Pants Co.,
29 Hopkins Place.
53 Yale Underwear Co.,
Hanover St. & Cypress Al.

Halethorpe Exhibit "G"

List of larger Manufacturing Concerns employing more than One Hundred (100) people grouped in sections of plant location.....

Northeastern..... North of Baltimore Street and east of Charles Street.

Northwestern..... North of Baltimore Street and west of Charles Street.

Southeastern..... South of Baltimore Street and east of Charles Street.

Southwestern..... South of Baltimore Street and west of Charles Street.

	Area Sq. Miles	% of Total Area	No. of Concerns	No. of Concerns per Square Mile
Northeastern	25.4	28.1	61	2.4
Northwestern	29.1	31.7	37	1.3
Southeastern	25.4	27.7	107	4.2
Southwestern	11.6	12.5	77	6.6

Number of Concerns in Southwestern = 72% of Concerns in Southeastern.

" " " " " = 208% " " " Northwestern.

" " " " " = 126% " " " Northeastern.

No. 3 Car Line serves 69% of Concerns located in Southwestern Section conveniently without transfer.

Hulethorpe Exhibit H

Average air line distance of twelve City-suburban car lines..... = 6.00 Miles.

Rate of Fare..... @ .075

Rate per Mile..... @ .0125

Note:- Seven and one-half fare rate used because more than 90% of passengers use tokens.

Air line distance of No. 3 Hulethorpe Line..... = 5.35 Miles.

Rate of Fare..... @ .15

Rate per Mile..... @ .028

Note:- Fifteen cent fare rate used because more than 80% of passengers use tokens.

.....

Average air line distance of twelve City-suburban car lines..... = 6.00 Miles.

Rate of Fare..... @ .10

Rate per Mile..... @ .0167

Air line distance of No. 3 Hulethorpe Line..... = 5.35 Miles.

Rate of Fare..... @ .20

Rate per Mile..... @ .0374

Note:- Twenty cent fare rate used because less than 20% of passengers use commutation books.

.....

Average rate of increase of twelve City-suburban car lines, per mile..... @ .0041

Rate of increase for No. 3 Hulethorpe Line, per mile.. @ .0093

Halethorpe Exhibit "I"

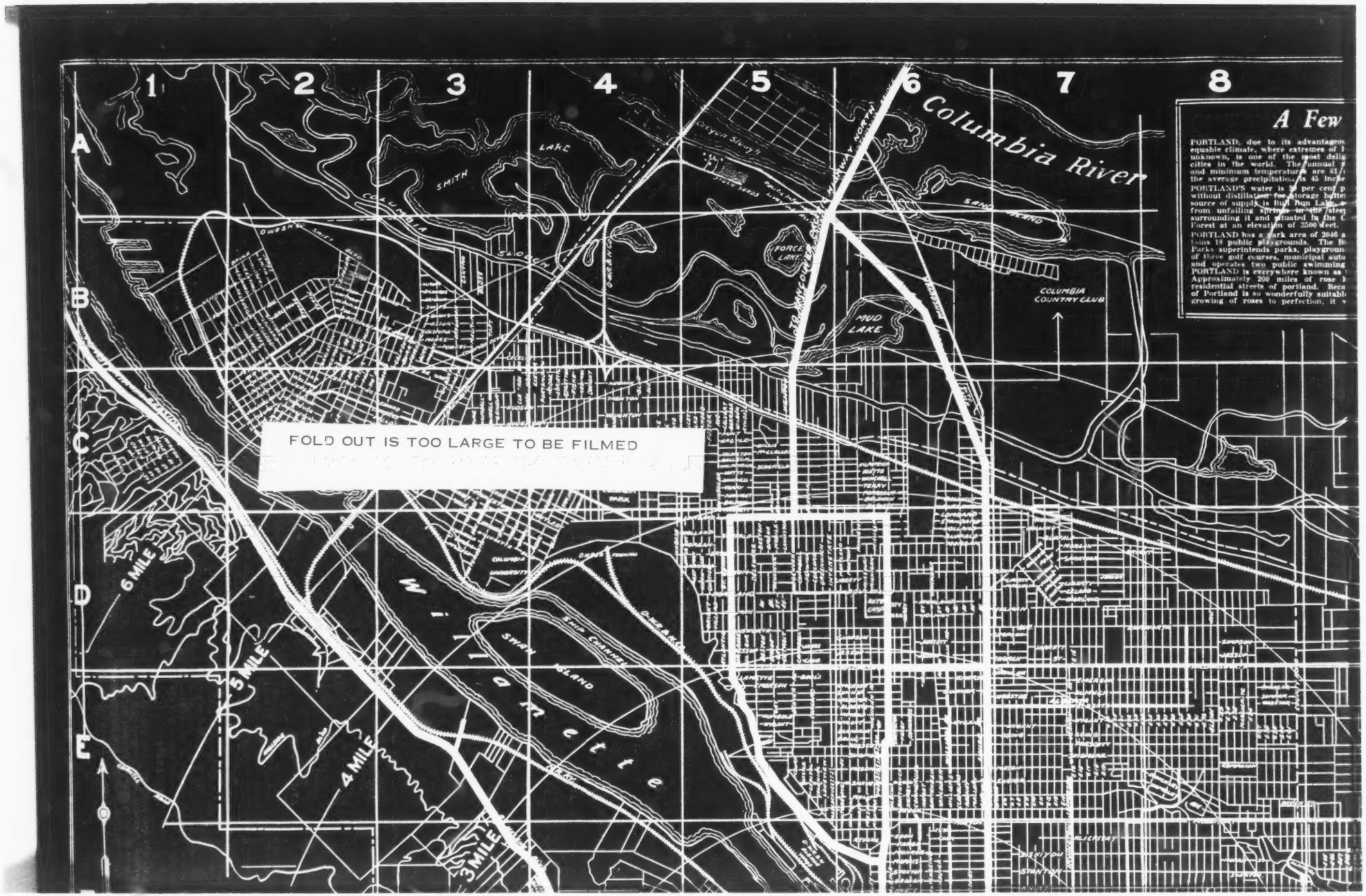
Comparative Annual Cost of Street Railway Transportation from Halethorpe and twelve other City-Suburban car lines.

(Calculated on basis of one person making a daily return trip on six days per week for fifty weeks during year.)

	7½ Cent Fare Rate.	10 Cent Fare Rate
Halethorpe Line.	$90.00	$120.00
Twelve other City-Suburban Car Lines	45.00	60.00
Difference....	$45.00	$60.00

Two persons in a family riding daily from Halethorpe would pay a difference of $90.00 per year more than other riders from twelve various suburban points.. This difference constitutes the same outlay as the average ground rent and is equal to a capital investment of $1,500.00

225

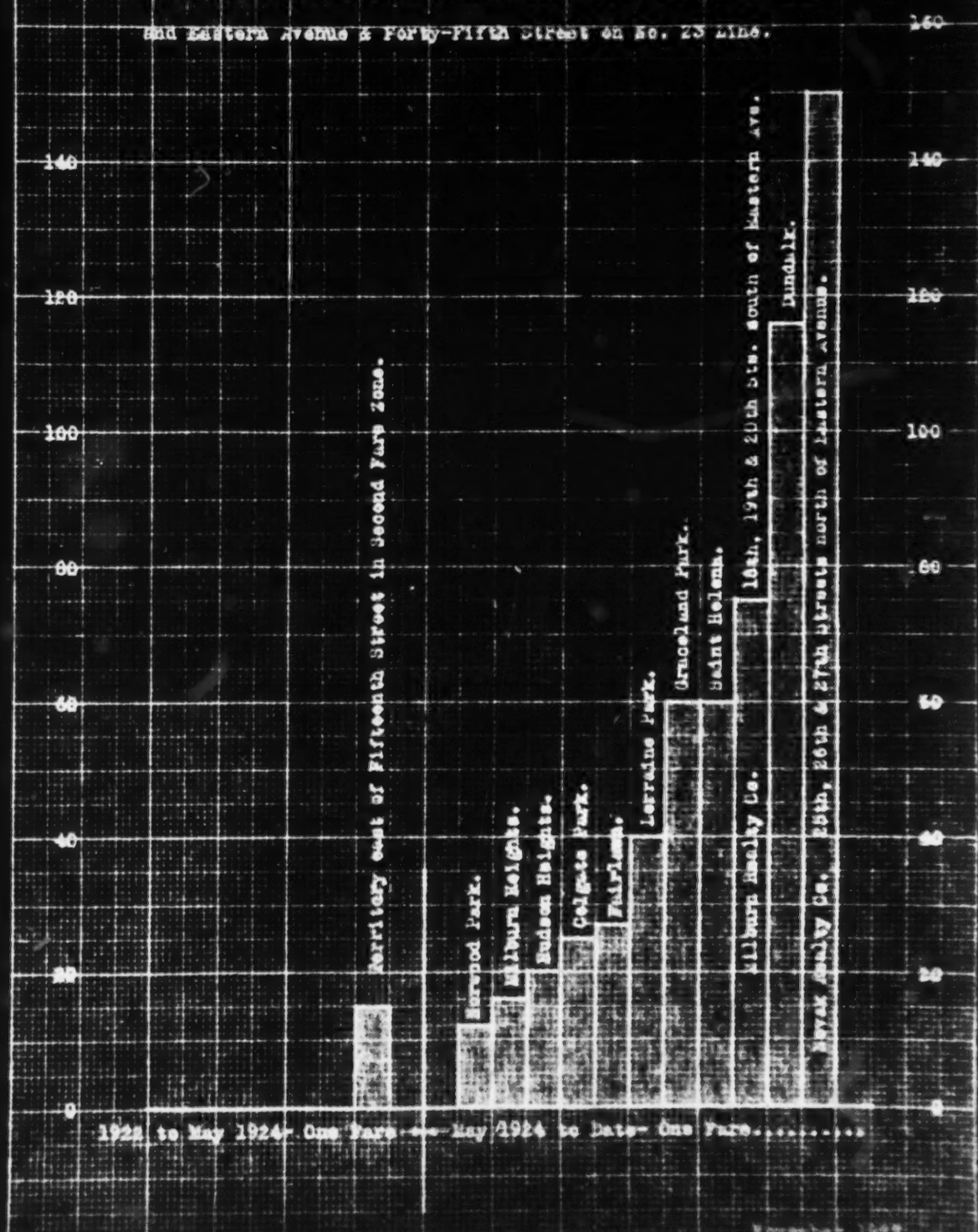


A Few

PORTLAND, due to its advantageou
equable climate, where extremes of
unknown, is one of the most delig
cities in the world. The annual
and minimum temperatures are 61
the average precipitation is 45 inche
PORTLAND'S water is 99 per cent p
without distillation for storage purpo
source of supply is Bull Run Lake,
from unfailing springs in the steep
surrounding it and situated in the C
Forest at an elevation of 3500 feet.
PORTLAND has a park area of 2046 a
Louis 18 public playgrounds. The Bo
Parks superintends parks, playgroun
of three golf courses, municipal auto
and operates two public swimming
PORTLAND is everywhere known as
Approximately 200 miles of rose
residential streets of portland. Beca
of Portland is so wonderfully suitable
growing of roses to perfection, it

Halethorpe Exhibit "K"

Chart showing the number of Dwellings constructed before and after One Fare Extension to Dundalk Junction on No. 26 Line and Eastern Avenue & Forty-Fifth Street on No. 23 Line.



November 1927.

EDCO Efficiency 20 X 20

STIPULATION OF COUNSEL AS TO RECORD ON APPEAL.

In the Circuit Court No. 2 of Baltimore City.

The United Railways and Electric Company of Baltimore

vs.

Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, Constituting the Public Service Commission of Maryland.

It is stipulated and agreed that the Record on Appeal shall comprise the following.

Docket Entries.

1. Bill of Complaint.
2. Plaintiff's Exhibit A, filed with the Bill of Complaint.
3. Answer to Bill of Complaint.
4. Opinion of Judge Ulman.
5. Final Decree.
6. (a) Order for Appeal.
   (b) Order for Cross-Appeal on Halethorpe.
7. Application of The United Railways and Electric Company in Case No. 2648, before The Public Service Commission of Maryland.
8. Application of the Halethorpe Community Association, et al., in Case No. 2648, before The Public Service Commission of Maryland.
9. Order No. 11802 of Public Service Commission, in Case No. 2648, i. e., the Emergency Rate Case.
10. Opinions and Orders of The Public Service Commission in previous Rate Cases and the Valuation Case, viz:

    (a) Cases Nos. 1568 and 1583, Opinion filed January 7, 1919, and Order No. 4608.

(b) Case No. 1682, Opinion filed September 30, 1919, and Order No. 5120.

(c) Case No. 1682, Supplementary Opinion filed November 29, 1919, and Order No. 5223.

(d) Case No. 1682, Opinion filed December 31, 1919, and Order No. 5327.

(e) Case No. 1682, Opinion filed May 26, 1924, and Order No. 8240.

(f) Case No. 533, Opinion filed March 9, 1926, and Order No. 10072.

(g) Case No. 533, Opinion filed February 1, 1928, and Order No. 12630.

11. The following portions of the Stenographic Transcript of proceedings before The Public Service Commission:

First Day:

Include pages 4 to 6 to "Mr. Benson," middle of page 6. Omit all the rest.

Second Day:

Include first paragraph on page 262. Include pages 297 to 391 both inclusive. Omit all the rest.

Third Day:

Include pages 396 to 621 to "Cross Examination Continued by Mr. Toole." Omit from page 621 "Cross Examination Continued by Mr. Toole" to page 656 inclusive.

Fourth Day:

Include from page 660 to page 765 "Cross Examination Continued by Mr. Toole." Omit from page 765 "Cross Examination Continued by Mr. Toole" to page 771 "Cross Examination Continued by Mr. Howard." Include from page 771 "Cross Examination Continued by Mr. Howard" to page 871 inclusive.

Fifth Day:

Include from page 875 to page 990 inclusive. Omit from page 991 to page 996 "Cross Examination Continued by Mr. Clark." Include from page 996 to page 1046 inclusive.

Sixth Day:

Include statement by the Chairman, beginning at the bottom of page 1050 to page 1052. Omit all the rest of the day.

Seventh Day:

Omit from page 1215 to page 1222 inclusive. Include pages 1223 to 1426 inclusive.

Eighth Day:

Include entire day from pages 1430 to 1675 both inclusive, except question by "The Chairman" and response by "The Witness," on page 1471. Omit this question and response.

Ninth Day:

Include entire day from pages 1679 to 1852 inclusive.

Tenth Day:

Include entire day from pages 1856 to 1875 inclusive.

Eleventh Day:

Include entire day from pages 1789 to 2103 inclusive.

Twelfth Day:

Include entire day from pages 2107 to 2374 inclusive.

Thirteenth Day:

Include entire day from pages 2378 to 2481 inclusive. Omit pages 2482 to 2573 inclusive.

Fourteenth Day:

Omit entire day.

Fifteenth Day:

Omit pages 2778 to 2906 both inclusive, except the following on page 2905:

"(Mr. Howard:) * * * Mr. Tingley read one passage from the testimony of Mr. Hoyt in the gas case. We desire to have all of Mr. Hoyt's testimony in that case, which I believe is No. 1915, we desire to have all of that considered as offered and in the record as showing the whole of what he said.

"(Mr. Tingley) That's perfectly satisfactory."

Include pages 2907 to 3002 inclusive.

Sixteenth Day:

Omit from the beginning of second paragraph headed "Mr. Tingley," on page 3126 to page 3127, "Cross Examination by Mr. Clark." Omit page 3143, from the beginning of the second paragraph "Mr. Tingley" to the end of the page. Include all the rest of the day, pages 3005 to 3306 inclusive.

Evidence from Records in Former Cases before Public Service Commission Offered in Evidence in this Case:

(a) Testimony of Allen G. Hoyt in the Gas Company Rate Case, 1926, No. 1915—16th day, April 19, 1926; pages 1573 to 2711, inclusive.

(b) Testimony of Allen G. Hoyt and T. S. Burroughs in the Railways Valuation Case, No. 533, 10th day, May 27, 1925, pages 1488 to 1584, inclusive.

(c) People's Counsel Exhibit No. 13 in the Railways Valuation Case, No. 533, filed Thursday, June 25, 1925, twenty-second day of the hearing.

Exhibits:

Include all Exhibits offered in evidence before the Public Service Commission, designated as Railways' Exhibits, People's Counsel's Exhibits and Halethorpe's Exhibits, except People's Counsel's Exhibit No. 27. Of Railways' Exhibit No. 21, only the title page, and pages 40 and 44 need be included.

Stipulation of Counsel as to Record on Appeal.

HENRY H. WATERS,

HAMAN, COOK, CHESNUT & MARKELL,

VENABLE, BAETJER & HOWARD,

JOSEPH C. FRANCE,

Solicitors for The United Railways and Electric Company of Baltimore.

RAYMOND S. WILLIAMS,

THOMAS J. TINGLEY,

Solicitors for The Public Service Commission.

Which said appeal being by the Court here also granted it is thereupon ordered by the Court here that transcript of the Record of proceedings in the case aforesaid be transmitted to the Court of Appeals of the State of Maryland under the rules thereof, and the same is transmitted accordingly.

Test: JOHN PLEASANTS,
Clerk of the Circuit Court No. 2
of Baltimore City.

In Testimony Whereof that the aforegoing is a full and true transcript of the aforegoing papers taken from the record of proceedings in the Circuit Court No. 2 of Baltimore City in the cause therein mentioned.

I hereto set my hand and affix the seal of the said Circuit Court No. 2 of Baltimore City on the 5th day of June, in the year of our Lord nineteen hundred and twenty-eight.

(Seal.)

Test: JOHN PLEASANTS,
Clerk of the Circuit Court No. 2
of Baltimore City.

Vol. VI

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 792

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, APPELLANT,

vs.

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND

FILED MARCH 27, 1929

No. 826

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND, APPELLANTS,

vs.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

FILED APRIL 10, 1929

APPEALS FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND

(34,101, 34,135)

(33,773, 33,774)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 464

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, APPELLANT,

vs.

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND.

No. 465

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND, APPELLANTS,

vs.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE.

APPEALS FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND

VOL. VI

INDEX

	Page
Proceedings in Court of Appeals of Maryland	1621
Docket entries	1621
Decree	1621

JUDD & DETWEILER (INC.), PRINTERS, WASHIGTON, D. C., SEPTEMBER 24, 1928

	Page
Opinion, Offutt, J.	1622
Concurring opinion, Adkins, J.	1653
Dissenting opinion, Bond, C. J.	1655
Dissenting opinion, Parke, J.	1656
Petition for appeal and order allowing same	1660
Assignments of error	1661
Bond on appeal (omitted in printing)	53
Citation and service (omitted in printing)	55
Petition for cross appeal and order allowing same	1668
Assignments of error	1672
Bond on cross appeal (omitted in printing)	64
Citation and service (omitted in printing)	66
Clerk's certificate (omitted in printing)	67
Stipulation as to printing record	1673
Statement of points to be relied upon, Case No. 464	1674
Statement of points to be relied upon, Case No. 465	1675
Record from circuit court No. 2 of Baltimore City	1677
Docket entries	1679
Decree	1680
Supplemental bill of complaint	1681
Note re Plaintiff's Exhibit "A"	1690
Plaintiff's Exhibit "B"—Opinion and order of Public Service Commission of Maryland	1691
Answer to supplemental bill of complaint	1698
Proceedings before Public Service Commission of Maryland	1702
Petition	1702
Order setting cause	1705
Decree	1705
Appeal	1706
Stipulation re transcript of record	1707
Order of transmittal	1709
Clerk's certificate	1709
Docket entries	1711
Opinion, Offutt, J.	1712
Decree	1716
Petition for appeal and order allowing same	1717
Assignments of error	1718
Bond on appeal	(omitted in printing)
Citation and service	(" " ")
Clerk's certificate	(" " ")
Statement of points to be relied upon and stipulation to print the entire record	1724
Petition for appeal and order allowing same, case No. 826	1727
Assignments of error	1732
Bond on appeal	(omitted in printing)
Citation and service	(" " ")
Clerk's certificate	(" " ")
Statement of points to be relied upon and stipulation as to printing	1738

IN COURT OF APPEALS OF MARYLAND, APRIL TERM, 1928

No. 52

HAROLD E. WEST, et al.

vs.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

DOCKET ENTRIES

Appeal from the Circuit Court No. 2 of Baltimore City. Filed June 5th, 1928, Advanced from No. 19 of the October Term, 1928.

July 16th, 1928, Decree affirmed in part and reversed in part, and case remanded for further proceedings in accordance with the views expressed in this opinion, each party to pay one-half the costs.

Opinion filed. Op., Offutt, J. To be reported. Bond, C. J., and Parke, J., dissent in part.

July 16th, 1928, Decree filed.

July 23rd, 1928 concurring opinion filed by Adkins, J.

August 2nd, 1928, dissenting opinion filed by Parke, J.

August 2nd, 1928, dissenting opinion filed by Bond, C. J.

Certificate to foregoing paper omitted in printing.

IN COURT OF APPEALS OF MARYLAND

HAROLD E. WEST, et al. Constituting the Public Service Commission of Maryland,

vs.

UNITED RAILWAYS & ELECTRIC COMPANY OF BALTIMORE

DECREE—Filed July 16, 1928

The appeal in this case, standing ready for hearing, was argued for the respective parties, and the proceedings have been since considered by the Court.

It is thereupon this 16th day of July, 1928, by the Court of Appeals of Maryland, and by the authority thereof, adjudged, ordered and decreed that the decree dated May 11th, 1928, of the Circuit Court No. 2 of Baltimore City, be and the same is hereby affirmed in part and reversed in part, and case remanded for further proceedings in accordance with the views expressed in this opinion, each party to pay one-half hte costs.

Carroll T. Bond, Hammond Urner, Wm. H. Adkins, T. Scott Offutt, D. Lindley Sloan.

IN COURT OF APPEALS OF MARYLAND

[Title omitted]

OPINION—Filed July 16, 1928

Judge Offutt delivered the Opinion of the Court. Bond, C. J., and Parke, J. dissents in part.

The United Railways and Electric Company of Baltimore, came into existence on the fourth day of March 1899 as the result of a merger of all the street railway lines operating in and near Baltimore, with a total authorized capitalization of $76,000,000. of which $38,000,000. was in bonds, $14,000,000. in preferred stock and $24,000,000. in common stock. The base fare at that time charged by its several constituent companies within the city limits was five cents, and by Chapter 313 of the Acts of 1900 the consolidated corporation hereinafter called the Company was specifically limited to a fare of five cents for the transportation of adults and three cents for children from any point on its lines within said city to any other point thereon which could be reached directly or by transfer at intersecting points, and that schedule it maintained until 1918.

In the meantime, the State, moving with a growing trend throughout the country, had abandoned its traditional policy of regulating public service corporations by direct legislative action, and had by Chapter 180 of the Acts of 1910 created the Public Service Commission of Maryland, hereinafter called the Commission to which it had com-

mitted plenary powers in respect to regulating the rates and service of public utilities, and had repealed existing legislation fixing rates for service furnished by such utilities, such repeal to become effective when and as the Commission determined in accordance with the law that such rates should be superseded by others. Gregg vs. Public Serv. Com. 121 Md. 30.

And on July 19, 1918, the Company for the first time applied to the Commission for its approval of a schedule of rates under which it would receive six cents for adults and a uniform increase of one cent from children between four and twelve years of age and riders using commutation tickets. The Commission was unable to hear the application immediately and the Company on August 28, 1918, with the assent of the Commission, filed a revised schedule which took effect October 1st, 1918, and remained in effect until January 7th, 1919 when it was formally approved by the Commission.

On May 23rd 1919, the Company applied for a further increase from six to seven cents for cash fares with four tokens for twenty five cents, which it subsequently changed to a request that it be permitted to collect a cash fare of ten cents with two tokens for fifteen cents, and on September 30th, 1919, it was permitted to charge a cash fare of seven cents or six and one half cents when tickets or other tokens were purchased. On December 26th 1919, it again applied for an increase in its rate schedule and the Commission advanced the base fare from six and one half cents to seven cents flat. On March 31st, 1924 at the Company's request the Commission authorized a further increase of the base fare to seven and one half cents, and on August 1st, 1927, it filed an application for permission to increase its base fare to ten cents, which was one hundred per cent more than it had charged prior to October 1st, 1918, and 33⅓ per cent more than it had been allowed to charge from March 31st, 1924, until it filed that application, and in connection with that request it alleged an apprehended financial crisis, and urged that it be allowed to put the increase in effect immediately as an emergency measure pending any hearing that might be had on its application for a permanent increase of its base fare to ten cents. The application for an emergency rate was denied but on Feb-

ruary 10th, 1928, the Commission passed an order which denied the application for an increase of the base fare to ten cents, but which permitted the Company

"to charge and collect for the transportation of persons over its several street railway lines, in Baltimore City and vicinity, a base rate fare of eight and one-third cents when tickets or fare checks are purchased, or nine cents cash, for the conveyance of each passenger over twelve years of age, and five cents for each child between the ages of four and twelve years, between any of the points designated in the schedule of the said Company filed with the Commission pursuant to the requirements of the Commission's order No. 8340 entered in Case No. 1682 on May 26th, 1924, or between the intermediate points, in either direction, on any of such lines, except in so far as the zones on any of the said lines are hereinafter modified or changed.

That the first fare zone on the Halethorpe line be and it is hereby extended to the terminus of the said line at Halethorps, effective from and after midnight of February 12th, 1928."

The Company, being dissatisfied with that order, on March 13th 1928, filed, in Circuit Court No. 2 of Baltimore City a Bill of Complaint in which it asked that that order be nullified in so far as it or any pervious order of the Commission prevented it from charging a flat ten cent fare, or, from continuing the first and second Halethorpe zones, and it further asked that the Commission be enjoined from enforcing that order or any prior order limiting the Company's rates. The Commission answered, the case was set down, evidence offered by the Commission, the Company and intervening persons interested in the matter, and after argument submitted for decree, and on May 11th, 1928, a decree was filed vacating the order in so far as the same purports to limit the rates of the plaintiff; except, however, as to that portion of said order which extended the first fare zone on the Halethorpe line to the terminus of said line at Halethorpe, as to which latter provision in said order the bill of complaint is hereby dismissed." and enjoining the defendants from enforcing that or any other orders of the Comission in so far as they limit or purport to limit the rates of fare to be charged by the Com-

pany. From that decree the Company and the Commission appealed, the Company on the ground that the Court erred in abolishing the second zone on the Halethorpe line, and the Commission, on the ground that the Court erred in vacating so much of its order as affected the rate of fare to be charged by the Company, and in enjoining it from enforcing such order. It may be noted that the relief granted in the decree is not precisely that prayed in the Bill. The Commission by its order did three things, it refused the Company's application for a ten cent fare, it fixed an eight and one-third cents fare, and it consolidated the two Halethorps Zones in one. The appellee in its Bill, asks that all orders of the Commission which limit its rate or prevent it from charing a ten cent fare be set aside, and that the Commission be enjoined from enforcing any such orders. The decree does not refer to a ten cent fare at all, but vacates all orders of the Commission, so far as they purport to limit the "rates of the plaintiff," and it based that ruling upon the Commission's "election" not to have the case remanded to them. But the Court clearly had no right to fix the Company's rates, since its function was judicial and confined to determining whether the order of the Commission was valed or invalid, and if in its judgment the action of the Commission was unlawful it should have remanded the case to the Commission for such further action as might be appropriate, for even if in fact the eight and one third cent rate allowed was inadequate to allow the Company a fair return on the value of its property, that fact did not oust the jurisdiction of the Commission to fix the Company's rates nor did it authorize the Court or the Company to fix them, for under the statute the power to do that is in the Commission alone. Gregg vs. Public Service Commission, supra; Chenoweth vs. Pub. Serv. Com. 143 Md. 626; Harve de Grace Bridge Co. vs. Public Service Commission, 132 Md. 24, Code Art 23 Sec. 375. But as the decree reads, it not only vacates the order of the Commission of February 10th, 1928, but in effect all other orders, affecting the Company's rate schedules, and it therefore either terminates this proceeding entirely and leaves the Company free to file a new application for increased rates, or it leaves the question of rates altogether at the discretion of the Company.

But neither of those alternatives was authorized by anything in the statute, but if the order was invalid because it was unfair, confiscatory, unlawful or for any reason, it should have been vacated and the case remanded to the Commission, for further proceedings in accordance with such guides, rules, and standards, as the Court might by appropriate order or decree direct.

The central dominating question presented by the appeal, is whether the schedules of rates promulgated by the Commission, is insufficient to yield such an income as will give to the Company a fair return on the value of its property. In the argument of the case it was said that the Commission had limited the Company to a return of 6.26% on the value of its property, but the order did not so state. What it did do, was to fix a schedule of rates, which after deducting the allowances approved by the Commission for maintenance, replacement, operation, financing and other expenses, would yield that return, but if more efficient or economical management resulted in a larger net return there was nothing in the order to prevent the Company from retaining the benefit of that saving, even though it increased its net earnings to more than 6.26% of the value of its property. So that the question actually is, whether a schedule of fares which after deducting all reasonable and proper expenses for the management and operation of the Company permits it to earn a net return of 6.26% on the value of its property, is confiscatory within the meaning of the State and Federal Constitutions, or, unlawful and unreasonable within the meaning of the Statute creating the Commission. To that question there are various approaches, all differing in some degree in the effect they have upon the meaning and weight of the facts of the case.

It may be approached from the Company's point of view, in which case the Commission's function would be largely administrative, and the ultimate determination of the propriety of its rates would rest with the Company, and the sole test of the lawfulness of such rates would be whether they were fair to it, and would yield what in its judgment was a proper return on the valuation of its property.

It may be approached from the standpoint of the patrons of the service, in which event the power of the Commission to fix the rates would be bounded on one side by the rule that the rates must in no event exceed the value of the service and on the other by the rule so long as the rates did not exceed the value of the service the Company was entitled to a fair return on the value of its property. Then there is a third approach, in which the question is viewed from the standpoint of the State, in which case, factors which from the standpoint of the public or the corporation have varying weights, such as the nature and necessity of the service, the effect of its continuance or withdrawal, both upon the security holders of the corporation, and upon property values, and the welfare of the people in the territory served by it, the extent to which the State itself is a partner in the enterprise, and the circumstances and conditions under which the Company acquired and exercises its franchises and privileges may become of paramount and controlling importance, and in our judgment the question must be approached from that direction.

Before dealing specifically with it however, we will refer briefly and generally to the powers, functions and duties of the Commission, to the extent of its jurisdiction and to the weight to be given its decisions. That the power committed to the Commission is legislative in character, notwithstanding that the manner in which it is exercised is forensic, is no longer open to question, Gregg vs. Pub. Serv. Com. supra, Chenoweth vs. Pub. Ser. Com. supra, and except where limited by the statute itself or some constitutional provision the acts of the Commission done in the exercise of its statutory powers are entitled to the same weight which would be given a direct act of the legislature. Knoxville vs. Knoxville Water Co. 211 U. S. 8, West v. Byron 138 Atl. 410.

There has been and is some uncertainty as to the extent to which courts will go in reviewing the conclusions and decisions of such administrative agencies as the appellant. In Interstate Commerce Commission vs. Union Pac. R. R. Co. 222 U. S. 541, in reviewing an order of that Commission, it was said:

"There has been no attempt to make an exhaustive statement of the principle involved, but in cases thus far decided, it has been settled that the orders of the Commission are final unless (1) beyond the power which it could constitutionally exercise; or (2) beyond its statutory power; or (3) based upon a mistake of law. But questions of fact may be involved in the determination of questions of law, so that an order, regular on its face, may be set aside if it appears that (4) the rate is so low as to be confiscatory and in violation of the constitutional prohibition against taking property without due process of law; Or (5) if the Commission acted so arbitrarily and unjustly as to fix rates contrary to evidence, or without evidence to support it; or (6) if the authority therein involved has been exercised in such an unreasonable manner as to cause it to be within the elementary rule that the substance, and not the shadow, determines the validity of the exercise of the power. * * *

In determining these mixed questions of law and fact, the court confines itself to the ultimate question as to whether the Commission acted within its power. It will nor consider the expediency or wisdom of the order, or whether, on like testimony, it would have made a similar ruling. 'The findings of the Commission are made by law prima facie true, and this court has ascribed to them the strength due to the judgments of a tribunal appointed by law and informed by experience'. Illinois C. R. Co. v. Interstate Commerce Commission, 206 U. S. 441, 51 L. ed. 1128, 27 Sup. Ct. Rep. 700. Its conclusion, of course, is subject to review, but, when supported by evidence, is accepted as final; not that its decision, involving, as it does, so many and such vast public interests, can be supported by a mere scintilla of proof, but the courts will not examine the facts further than to determine whether there was substantial evidence to sustain the order."

While in the later case of the Ohio Valley Water Co. vs. Ben Avon Borough 253 U. S. 289, where the Supreme

Court of Pennsylvania held that where there was substantial evidence to support them, the findings of the Public Service Commission would not be reviewed on appeal, the Court in reversing that decision said:

> "The order here involved prescribed a complete schedule of maximum future rates and was legislative in character. * * * In all such cases, if the owner claims confiscation of his property will result, the state must provide a fair opportunity for submitting that issue to a judicial tribunal for determination upon its own independent judgment as to both law and facts; otherwise the order is void because in conflict with the due process clause, 14th Amendment. * * *."

The question came before this Court and was decided in accordance with the views expressed in Interstate Commerce Com. vs. Union Pac. R. R. Co. supra, West v. Bryon, supra. In that case, speaking through Judge Parke, it was said:

> "The first rule is the order will not be disturbed except upon clear and satisfactory evidence that it is unreasonable or unlawful. This is a legislative mandate which is reinforced by the fact that the commission is a tribunal erected by law, informed by experience, and assisted by a trained corps of subordinates. Code, art. 23, Sec. 408; Public Service Commission v. N. C. Ry. Co., 122 Md. 355, 388, 391, 392, 90 A. 105; Hevre de Grace Bridge Co. v. Public Service Commission 132 Md. 16, 4, 103 A. 319; Interstate Commerce Commission v. Union Pac. Ry. Co. 222 U. S. 541, 32 S. Ct. 108, 56 L. Ed. 308."

And that statement of the rule is not only supported by the weight of authority (see discussion in Dickinson on Administrative Law) but is required by the Statute itself, Code, Art. 23 Sec. 408, and appears to be indicated by the very nature and necessity of the thing for reasons pointed out by Judge Parke in West vs. Bryon supra. It is true that in Ohio Valley Water Co. vs. Ben Avon Borough supra, the court said that where the issue of confiscation

was raised the due process clause of the 14th Amendment required that provision be made for submitting that question to some judicial tribunal authorized to adjudicate it upon its "own independent judgment as to both law and facts;" and that expression is consistent with the theory that in reviewing the decision of an administrative agency the court would review the facts as in an equity case. But such a conclusion is inconsistent with all prior decisions of the Supreme Court, and while in Bluefields W. W. & I Co. cs. Pub. Ser. Co. 262 U. S. 689 it was again stated that upon the question of confiscation the utility was entitled to the "independent judgment of the court as to both law and facts," it is not thought that by that language, the court in either of those cases, meant to say anything more than that where the facts are undisputed or must be taken as established, and the inference to be drawn from them inevitable, the courts will review any conclusion of law predicated upon such facts. But we do not believe that it was intended to overturn the policy established by the decisions of that court, and by many state and federal statutes which commits to such agencies as Public Service Commissions, the ascertainment of facts which rest in conflicting evidence, and we find therefore no inconsistency between the language quoted from those opinions and the language of this Court in West vs. Bryon supra, and we feel too that in dealing with the constitutional question involved in confiscation some weight must be given to the statute which places upon the person attacking the decision of the Commission the burden of establishing its unlawful or unreasonable character by "clear and satisfactory proof." West vs. Bryon, supra.

Reverting now to the main question presented by the appeal, the first inquiry is whether a schedule of rates which permits the appellee to earn 6.26% on the fair value of its property can be said to be confiscatory within the meaning of that clause of the 14th Amendment of the Federal Constitution which denies to the states the power of depriving any person of his property without due process of law. Confiscation, in that sense, is essentially a relative, and not an absolute term, and it does not exist apart from the facts which are said to occasion it. No fixed or general rule can be announced by which it can be deter-

mined whether it exists in any given case, because whether it exists or not must be determined from factors which vary with the facts of each case, since rate cases like wills seldom have "twin brothers." Covington & L. Turnpike Company vs. Sanford 164 M. S. 592 et seq. and we know of no authority for the proposition that public utilities without regard to circumstances or conditions are entitled to a return of any given amount of percentage on the value of their properties. For while there are cases which hold that such utilities are entitled to a return of six or seven or eight per cent on the value of their properties, they have no controlling weight, because the decisions are uniformly found to be based upon facts peculiar to the several cases. So in this particular case, in deciding whether the schedule of rates prescribed by the Commission, is confiscatory, we must be guided by the facts of this case, and are little aided by what this court or some other court may upon different facts have found to be lawful or confiscatory, fair or unreasonable rates.

To attempt to analyze in detail the mass of factual and opinion evidence adduced before the Commission is neither practicable or necessary, since such facts as are relevant to the question before us rest for the most part in records of the Company or the Commission and are not in dispute, and we will at this time only refer to such as are necessary to indicate the contention of the parties.

The total value of the Company's property including easements may be placed at $75,000,000. That was the valuation placed upon it by the Commission in 1924, and while there was some dispute as to whether that figure should not be increased to include additions since the valuation, that contention was not stressed in this court, but was treated as a matter of detail which could be adjusted to fit the facts at some future time, so that the figure of $75,000,000 may be treated as the true value of the Company's property for all the purposes in this case..

The financial structure of the Company appears from the following tabulation in which the "basic value" of its property is assumed to be $70,000,000, the value placed upon it by the Commission exclusive of the value of the easements which has been fixed at $5,000,000:

Class of Securities	Outstanding 12/31/1926	Per cent of basic value	Outstanding 6/30/1927	Per cent of basic value
Mortgage Bonds	47,405,000	67.7	47,405,000	67.7
Miscellaneous Obligations	6,392,700	9.1	7,664,200	10.9
Income Bonds	13,977,000	20.0	13,977,000	20.0
Total Bonds & Miscellaneous Obligations	67,774,700	96.7	69,046,200	98.7
Stocks	20,461,200	29.2	20,461,200	29.2
Grand Total	88,235,900	126.0	89,508,400	127.9

And it appears that the Company has for some time past been paying, and still pays, dividends on its common stock at the rate of 4%, and that that stock, having a par value of $50 per share, has in late years sold on the Baltimore Stock Exchange at prices ranging from $16 to $21 per share, and it further appears that its mortgage bonds bought at current market prices yield the purchaser a return of about 6%. From time to time since 1911, the Company has had occasion to borrow for varying periods, and the rates at which this money was bought, as shown by the following tabulation, throws some light upon the changes in its credits:

Issued		Description	Amount	Proceeds	Rate received	Interest rate
1911	2nd Half	3 Years' Notes	$3,125,000	$3,046,876	97½	5%
1914	"	10 Year Car Trust Certificate	153,000	153,000	100	6%
19	2nd Half	2 Year 5% Collat. Trust Notes	1,000,000	995,000	99½	5%
1914	2nd Half	1st Mtge. Gold Sinking Fund Bonds (Md. Elec. Rys.)	489,000	469,440	96	5%
1916	Feb.	5 Year 5% Gold Notes	2,750,000	2,695,000	98	5%
1917	Oct.	6% Convertible Gold Notes	3,000,000	2,850,000	95	6%
1919		5 Year Convertible Notes	1,528,000	*	*	5%
1917		1st Mtge. Gold Bonds (Md. Elec. Rys.)	457,000	447,860	98	5%
1920	2nd Half	Car Trust Certif.—Series 1920 (10 Years)	875,000	831,250	95	8%
1921	Feb.	7½ Coupons Gold Notes	1,500,000	1,383,750	92¼	7½%
1922	Apr.	1st Consol. Mort. 50 Year Gold Bonds	6,000,000	5,550,000	92½	6%

Issued		Description	Amount	Proceeds	Rate received	Interest rate
1922		(1st Consol. Mort. 50 Year 6% Gold Bonds).....	6,000,000	5,500,000	92½	6%
		(In lieu of 4% Bonds ($2,684,000 @ $250 per Bond)		671,000		6%
1922	July	5 Year 6% Gold Notes.....	2,500,000	2,375,000	95	6%
1924	1st Half	1st & Refunding Gold Bonds Ser. A. (Md. Elec. Rys.)..	4,000,000	3,790,000	94¾	6½%
1927	July	3 Year Notes.....	2,500,000	2,412,000	96½	6%

From another table filed by People's Counsel it appears that the net income of the Company, for the years from 1920 to 1926 inclusive was as follows:

1920—1,043,599.21 1921—735,230.58 1922— 799,268.99 1923—976,266.38
1924— 976,068.39 1925—980,609.53 1926—1,010,054.41

and that for the same period the operating income was:

1920—17,313,589.84 1921—16,332,865.34 1922—16,122,592.02
1923—16,461,798.86 1924—16,453,254.31 1925—16,621,220.20
1926—16,715,709.07

Another tabulation filed on behalf of the People indicated the following ratio of funded debt to track operation per mile, and gross revenue per dollar in a number of American cities:

	Funded debt and income bonds	Funded debt per mile of track operation	Funded debt per dollar gross revenue
Baltimore	67,774,700	164,000	4.05
Without Income Bonds	53,797,700	130,000	3.22
Detroit	35,155,000	88,000	1.63
Los Angeles	19,852,000		1.64
San Francisco	11,695,000	42,600	1.19
Pittsburgh	34,215,000	57,700	1.57
Boston	49,819,000	100,200	1.41
Cleveland	5,495,000	13,310	.30
St. Louis	52,590,000	120,900	2.80
St. Paul, Minn.	19,478,000	38,700	1.40
Buffalo	25,392,782	62,200	2.47
Providence	13,714,000	47,200	1.61
Washington	5,606,000	77,000	1.21
Cincinnati	5,288,400	19,840	.65
Indianapolis	13,497,517	56,300	2.35
Denver	10,863,500	48,900	2.38

Still another table showed the current rates of fare, rate of return, and base in twelve representative American cities comparable in size to Baltimore, to be as follows:

	Rate of return	Base	Fare
Baltimore (New Fare)	6.26	$75,000,000	9¢—3 for 25¢
Boston	4.64	159,025,142	10¢—4 for 25¢ (limited)
Chicago Surface Lines	6.27	164,600,000	7¢—3 for 20¢
Cincinnati	4.16	36,381,017	10¢—3 for 25¢
Cleveland	4.35	37,106,506	7¢—8 for 50¢
Kansas City	1.82	23,300,000	8¢—15 for $1.00
Los Angeles	3.06	54,000,000	5¢
Philadelphia	5.07	216,000,000	8¢—2 for 15¢
Pittsburgh	5.85	68,170,000	10¢—3 for 25¢
St. Louis	4.66	52,024,192	8¢—2 for 15¢
San Francisco	5.37	35,000,000	5¢
Washington	4.69	50,000,000	8¢—6 for 40¢

And another table lists seventy-nine American cities each having a population of over 100,000, and shows the popula-

tion of each city, the rate of fare charged on the street railways, and commutation privileges, established in connection with such fares in each city. In analyzing that table Mr. H. Carl Wolf, engineer for the Commission, testified:

"Of the 81 cities listed as having a population of 100,000 or more, only 19 of them have a fare higher than Baltimore. There are 30 cities with a ten cent fare. Only one of these has a straight ten cent fare with no tokens. Ten of them, or one-third the number have an eight and one-third cent token fare, six of them have an eight and one-third cent token fare, plus a pass system, one of them has a seven and a half cent token fare, plus a pass system, and when the Commission recalls that at the present time 97% of the full fare passengers in Baltimore are using the token fare they will see that the ten cent-seven and a half cent fare, plus a weekly pass, if applied to Baltimore, would cause practically no increase in fare, and probably a decrease.

There is one of these 30 cities with a ten cent fare which has not a token fare but which does have a pass, and 11 of them with ten cent fares charge 7½¢ or lower for tokens with no passes."

And in criticising that analysis Mr. C. D. Emmons, president of the Company said:

"I have this from the late bulletin; that the trend of fares over the United States has been upward since July 1, 1923, and is continuing upward. On October 1, 1927, the average fare of 272 cities reporting was 7.9516c and November 1, 1927, the average fare was 7.984c, which is the highest average fare that the street railway industry has ever had not excluding the War period.

There are at the present time, or since the November bulletin, there have been twelve different cities that have changed the rate of fare. There are three interurban roads that have changed the rate of fare. At the present time there are fourteen fare cases pending.

Q. What are the direction of those changes?

A. The changes are all up with the exception of a municipal city which has put in a weekly pass, and the information here does not say about the flat fare. I presume it's the same, a flat fare with a weekly pass. I think they give

a statement that there are only, I have forgotten, of basic 10¢ fare cities, but my statement here is that there are—I got this morning, dated November 26th, from New York—this gives 219 United States cities.

Q. Having a basic fare of 10¢?

A. That's right, yes.

(Mr. Tingley:) Those are not cities of over 100,000?

(The Witness:) No, but I counted the cities of over 100,000 in this and there are 31 cities of over 100,000 that have a basic 10¢ fare. * * *

(The Witness:) Cicero, Illinois, 65,400; Forest Park, Illinois, 10,768; Maywood, Illinois, 12,072; Oak Park, Illinois, 53,500; Auburn, Maine, 16,985; Bangor, Maine, 25,978; Bath, Maine, 14,731; Lewiston, Maine, 35,500; Billerica, Massachusetts, 3,646; Boston, Massachusetts, 787,000; Braintree, Massachusetts, 10,580; Concord, Massachusetts, 6,461, Framingham, Massachusetts, 17,033; Holyoke, Massachusetts, 60,400; Lexington, Massachusetts, 6,350; Natick, Massachusetts, 10,907; Needham, Massachusetts, 7,012; Newburyport, Massachusetts, 15,618; Newtonville, Massachusetts, 5,700; Wakefield, Massachusetts, 13,025; Waltham, Massachusetts, 35,700; Wellesley, Massachusetts, 6,224; Woburn, Massachusetts, 16,574; Worcester, Massachusetts, 193,300; Morristown, New Jersey, 12,548; Ocean City, New Jersey, 3,721; Lackawanna, New York, 17,918; Mauch Chunk, Pennsylvania, 3,666; West Chester, Pennsylvania, 11,717. * * *

(Mr. Clark:) How many states now have you cited there?

(The Witness:) Six states."

From other tables it appears that the wages of "platform" men have increased from a maximum of 22¢ an hour in 1913 to a maximum of 53¢ an hour in 1926, that other wages showed an approximately similar increase, and that during the same period the general cost of living showed an increase from a base index of 100 to an index of 173.

Perhaps the most significant fact connected with the question before us is the decline in the number of revenue passengers carried by the Company from 253,834,179, in 1919 to 225,255,633 in 1926, and 145,256,680 (August ap-

proximated) for eight months of 1927. Coincident with that decline was a gradual increase in the rates of fare from 5¢ prior to 1919 to 7½¢ in 1927, and an increase in the registration of automobiles from 85,430 in 1919 to 267,649 in 1926.

In connection with those figures a further fact appears which is that while the total number of revenue passengers is decreasing, the peak load of passengers that is the greatest number of passengers carried during the "rush hours" each day has increased, and to accommodate that increasing demand, it has become necessary for the Company to maintain an increased equipment which is to some degree idle during a part of the day.

One of the contentions made by the Company was that the existing rates so affect its credit that it is compelled to pay unreasonably high rates for money, and in connection with that contention it filed a table showing the rates it has paid since 1920, which in part shows:

Date of Issue	Amount of Issue	Less Banker's Commission	Cost of Money to Company	Market Price
July 1, 1920 Car Trust 8% Gold Certificates	875,000	43,750	9⅜%	100
Jan. 15, 1921 Ten Year, 7½% Gold Notes	1,500,000	90,000	8.70%	98¼
Mar. 1, 1922 First Consolidated Mortgage, 6s, due March 1, 1949	6,000,000	270,000	6.75%	97
Mar. 1, 1922 Deposit $250. per $1,000 bond by holders of $2,684,000, first consolidated mortgage 4s to secure additional 2% interest coupons	671,000	28,903	6.60%	—
Aug. 1, 1922 Five Year, 6% Gold Notes	2,500,000	75,000	7.27%	98
Jan. 1, 1928 The Maryland Electric Rwys. Co. First and Refunding Mortgage Gold Bonds; Series "A"—6½% due Jan. 1, 1957	4,000,000	210,000	6.93%	100
Mar. 1, 1927 Three year, 6% Gold Notes	2,500,000	62,500	7.32%	99¼

These facts are but a small part of those to be found in the mass of evidence contained in the record, but they are sufficient to indicate the grounds for the conflicting contentions of the parties to this appeal, which as we understand them are in substance as follows:

In respect to the main question the appellant appears to contend that the schedule of fares promulgated by the Commission, is, under existing conditions, all that the service is worth, and fair alike to the Company and the public, but, that whether fair to the Company or not no higher rates should be allowed, because the Company is only entitled to collect from the public the value of the service it renders.

The contention of the Company on the other hand seems to be that it is entitled to earn a fair return on the value of its property, that "fair return" means a return of at least 8% on the value thereof, and that it is entitled to a schedule of rates high enough to insure that return regardless of the value of its service to the public. Or reduced to its lowest terms, and quoting its own language the Company's proposition is, that "compulsory limitation of the Company's rates to yield a maximum of less than eight per cent is confiscatory and unlawful," while the Commission contends that "rates must in no event exceed the value of the service, regardless of return or confiscation," and somewhere between those extreme theories lies the law.

Manifestly the proposition submitted by the Company is broader than the law while that of the Commission is too indefinite and vague to be of much aid in settling the question before us. There is so far as we know no rule of law which guarantees to Public Service corporations the right to earn eight per cent on the value of their properties regardless of the fairness of their rates to the public or of any other fact or circumstance, but the law as stated in C. & L. Tpke Co. vs. Sandford, supra, is to the contrary, there it is said:

"It is proper to say that if the answer had not alleged, in substance, that the tolls prescribed by the act of 1890 were wholly inadequate for keeping the road in proper repair and for earning dividends, we could not say that the act was unconstitutional merely because the Company (as was alleged and as the demurrer admitted) could not earn more than 4% per cent on its capital stock. It cannot be said that a corporation operating a public highway is entitled, as of right, and without reference to the interests of the public to realize a given per cent upon its capital stock. When the question arises whether the legislature has exceeded its constitutional power in prescribing rates

to be charged by a corporation controlling a public highway, stockholders are not the only persons whose rights or interests are to be considered. The rights of the public are not to be ignored. It is alleged here that the rates prescribed are unreasonable and unjust to the company and its stockholders. But that involves an inquiry as to what is reasonable and just for the public. If the establishing of new lines of transportation should cause a diminution in the number of those who need to use a turnpike road, and, consequently, a diminution in the tolls collected, that is not, in itself, a sufficient reason why the corporation, operating the road, should be allowed to maintain rates that would be unjust to those who must or do use the property. The public cannot properly be subjected to unreasonable rates in order simply that stockholders may earn dividends."

Nor, is there any rule by which we may precisely determine what is the actual value to the public of such service as that which the Company sells.

When the Company speaks of a "return of not less than eight per cent" on its property it must be remembered, that nearly 68,000,000 of its actual value, is covered by bonded indebtedness or other obligations bearing a fixed rate of interest far below that rate, and that the balance of the eight per cent return remaining after paying that interest would go to the holders of stock having a par value of $20,461,200, the real value of which is seven million dollars, if the easements are valued at $5,000,000 or $2,000,000 if they are excluded which would necessarily be greater than an eight per cent return on the value of that stock.

But aside from that and assuming that the rate schedule will yield less than eight per cent on the actual value of all the Company's property or even less than eight per cent on the actual value of the stock that fact alone cannot characterize it as confiscatory, but other factors must be considered.

It is argued that an eight per cent return is necessary to enable the Company to borrow money at reasonable rates, and that the fact that it is limited to a rate schedule which will yield a return of only 6.26% puts it at a disadvantage as a borrower and weakens its credit. But the evidence fails to support that contention. It is true that there is in the record a mass of subjective and highly conjectural tes-

timony pro and con relating to it, much of which tends to support the Company's contention, but, whilst its usefulness may be conceded, the speculative opinions of experts who are themselves interested in increasing the rate of return on similar utilities cannot be substituted for the judgment of the Commission, and accepted as a conclusive determination of the question, at least where the judgment of the Commission is based upon substantive evidence.

The value of such securities as the obligations of public utility companies depends in the main upon the security they offer as well as the rate of return which they will pay the investor. And it is quite as reasonable to assume that the fact that the ratio of the Company's funded debt to the value of its property, is as the Commission found approximately 90%, affects its credit, as the fact that it can only earn 6.26 on the value of its property.

In connection with that contention the Company asserts that the use of the automobile for the transportation of those who otherwise would use its lines has increased to such an extent, that it has reduced its net revenue to such a point, that any rate schedule indicating a return of less than 8% on the value of its property impairs the security offered investors, and lessens the confidence of the public in its financial stability, and that therefore it is entitled as of right to a schedule which will insure such a rate of return regardless of its effect on that part of the public who for one reason or other are obliged to use its lines. But, if as the Company contends, it is required to pay more for its money because of the risk resulting from the increasing competition of the private automobile, it certainly cannot expect to correct that condition by raising its rates to such a point that investors will purchase its stock as a gambling or speculative venture. Nor in fact do we see any occasion for the gloomy outlook of the Company's witnesses. It appears to be well and economically managed, and the market price of its securities indicates continued public confidence in its stability, as well as in its ability to liquidate its obligations, when and as they accrue, and from the volume of its business there is little likelihood that it will cease to be a highly productive property not only useful but essential to the city's welfare and the public convenience, and profitable to its owners, provided sufficient

allowance is made for keeping its property from depreciating.

There seems to be no question but that the private automobile is a serious competitor of the Company, and it is estimated that it carries about twenty-five per cent of those who would but for it use the street cars, and it is possible that it may make further inroads on its business, regardless of rates. In fact the Company rather repudiates the idea that rates have any substantial effect upon the volume of its traffic, but attributes its decline almost entirely to the automobile, although as a matter of common sense there must be some substantial relation between transportation rates and the volume of traffic. But irrespective of that the Company's contention ignores one very important if not controlling consideration, and that is that it is a "public" service company, and that practically speaking the substantial value of all of its property is due primarily to franchises and privileges which it has secured from the State, upon the condition, express or implied but always present, that it will give in return adequate service at reasonable rates. Those privileges include not only the right to do business and operate its lines over public highways, but also protection against any other agency offering to perform the same service in the same territory. So that when the Company contends that since conditions which neither it nor any one else can control, increase the expense of its service, that it should be permitted not only to transfer that entire burden to that part of the public who must of necessity use its lines, but to also increase its net earnings beyond a point they have ever reached, it ignores the very patent fact, that if the State withdrew from it the protection from competition by other public service companies offering the same service, which it now enjoys, its very existence would be threatened. The mere fact therefore that increasing automobile competition has made it more expensive for the Company to serve those who do use its lines, while it justifies increasing its rates to a point which will absorb the increased expense, affords no excuse for still further increasing them to a point which will not only be burdensome to the traveling public but will at the same time yield to the Company a greater return than it has

ever received, and greater than that usually received by others operating in the same field elsewhere under substantially the same conditions.

Whether a given rate is burdensome to the public, involves the question of the value of the service, and presents an extremely difficult and troublesome question, the answer to which, except in extreme cases, can only rest in the judgment of the Commission operating upon varying factors each of which is entitled to some weight, but no one of which ordinarily is controlling.

One consideration suggested is the diminished purchasing value of the dollar, the increase in wages, and the fact that wages have risen higher than the cost of living, on the theory that as the public has more money to spend, it suffers no hardship if it is required to spend more, and that by judicious management it may for that reason be brought from a five cent to a ten cent state of mind without any serious physical or mental disturbance or inconvenience. But while that theory may have a certain appeal for the Company, it is too refined and delicate for general and practical use, and although it might have a material and substantial relation to the operating expenses of the Company, it has no apparent relation to the value of its service. The fact that it cost one man three dollars to grow a bushel of wheat is no reason why a purchaser should be compelled to pay him three dollars for it, if in fact, measured by the market it is only worth two, and ordinarily the affluence of the buyer has no perceptible relation to the value of the product of the seller. Whilst not strictly analogous, recent developments in the ice business tend to illustrate the fallacy of that contention. It is a matter of general knowledge that the manufacture and sale of machines for artificial refrigeration, and the manufacture of ice in homes, has had a serious effect on the artificial and natural ice business as formerly conducted. But assuming that the ice business is a public utility and its rates subject to regulation, it would be manifestly unreasonable to allow an ice company to charge to its patrons the losses it had suffered from the inroads of competitors, by requiring them to pay rates high enough to absorb these losses.

Another factor suggetsed is that a decrease in the volume of traffic indicates that the rates are burdensome, and

there is some force in that suggestion, but the difficulty in this case lies in attributing the decline to the increase of fares. So far as the facts go, it may be due either to that or to the increasing use of the automobile. Whether it is due to one or the other is a matter of unguided conjecture. For while there is in the record a confused mass of contradictory figures relating to the effect of increased rates on the volume of traffic, it is impossible to deduce from them any definite or sound conclusion.

Nor can the value be determined by comparison, by the market, or by what it would cost an individual to obtain by a privately owned agency the same service. There is no other public agency rendering the same service with which the company can be compared, for it is protected in a monopoly, and for the same reason there is no general market by which the value of its service can be ascertained, nor would it be reasonable to measure its value by what it costs the owner of an automobile to operate it so as to give like service, because of the difference in machines and in the expense incident to their operation, and because there is no fair comparison between the operation of a private automobile and a public service corporation operated as a monopoly and for profit. So that in determining whether the rates fixed by the Commission are confiscatory we are finally remitted to a few simple realities, such as the past earnings of the Company, the returns usually received by other compabies engaged in the same business in other fields under somewhat similar conditions, the rates which the Company has voluntarily fixed for its service in the past, the decrease in the purchasing power of the dollar, and the effect which other orders of the Commission have had upon the earning power of the Company.

It may be assumed that the base fare prior to the formation of the Commission was reasonable because up to that time no complaint had been made of it by the Company and in 1900 it was fixed by an Act of the Legislature, which has never been challenged. The fare then was five cents which would be approximately equal to 8-1/3 cents to day when the decreased purchasing value of the dollar is considered, and if that were all the question would be free from difficulty, for if 5 cents was fair then the equivalent of the value which five cents had then should be fair now.

But there are other factors which affect it, such as the extension of the city fare zone so as to embrace all the new territory brought into the city by the Annexation of 1918, the effect of which was to relieve a part of the public of the burden of an extra fare possibly at the expense of the Company and certainly of the remaining part of the public, and also the fact that certain of the operating expenses of the company such as the cost of labor increased in a ratio greater than that in which the purchasing power of the dollar declined, for although speaking generally the dollar now will purchase perhaps sixty per cent of what it would in 1913 it will not purchase as much as fifty per cent of the labor which the Company could have bought with it then.

But these factors were considered fully by the Commission when it fixed the base fare at 7½ cents in 1924, and in view of that finding and of the further fact that the record does not disclose any data sufficiently specific to enable us to say that it was unlawful, we are not inclined to give them any controlling weight now, especially as the schedule fixed by the order in this case is designed to give the Company a higher return on its property than it received prior to the extensions.

It also appears that if the schedule produces the results anticipated by the Commission that the net earnings of the Company in comparison with the value of its property will be as great if not greater than at any time in so much of its history as has been called to our attention, and that it will yield a return thereon with one possible exception higher than that now received by any company engaged in the same business under conditions at all comparable to those obtaining in Baltimore and its environs, and higher, than the interest rate allowed by statute in this State, Art. 49, Sec. 1. After giving due consideration to these several factors, and to the Code Art. 23, Sec. 408, we are unable to say that the schedule of fares promulgated by the order appealed from was unlawful, unreasonable or confiscatory which permits a return of 6.26 on the value of the Company's property and it follows that so much of the opinion of the trial court as set aside that part of the order and enjoined its enforcement was in error. And that conclusion seems to be in accord with such authority as there is on the subject. In the case of Smyth vs. Ames, 169 U. S.

545, the court expressly reaffirmed and approved the statement in Covington & L. Turnpike Co. supra, to which we have referred. McCardie vs. Ind. Water Co., 272 U. S. 419, cited by appellee can scarcely be considered authority to the contrary. For aside from the fact that the decision in that case was based upon facts essentially different from those in this case, it merely held upon those facts that at that time a rate of seven per cent was not confiscatory. In respect to that question it said: "The evidence is more than sufficient to sustain the rate of seven per cent found by the Commission", and while there is a certain ambiguity inherent in that expression, it certainly did not establish the rule that anything less than seven per cent would in all cases have been confiscatory, and that is the interpretation placed upon it in the dissenting opinion of Mr. Justice Brandeis, where it is said: "To avoid the possibility of misunderstanding, I add merely that in my opinion the facts of record, considered in connection with those of which we have judicial notice, do not justify holding that rates which yield a return of less than 7 per cent would be so unreasonably low as to be confiscatory." Nor is the case of R. R. & W. H. Con. vs. Duluth Street Railway Co. 273 U. S. 625, in point. There the Commission allowed a charge of six cents, but required the Company to issue six tickets for not less than twenty-five cents. The District Court prohibited the enforcement of that rate and authorized the carrier to charge not more than six cents flat. On an appeal the Supreme Court only considered the question of whether the District Court had jurisdiction to hear the complaint, and the question of the reasonableness of the rates was not referred to.

There is certainly nothing in these cases nor in any other decision of the Supreme Court which is the final authority upon the question involved in this appeal, which is in any way inconsistent with the decision of that Court in Dayton-Goose Creek R. R. Co. vs. U. S. 262 U. S. 477, in which the court through the Chief Justice in part said:

"The carrier owning and operating a railroad, however strong financially, however economical in its facilities, or favorably situated as to traffic, is not entitled, as of constitutional right, to more than a fair net operating income upon the value of its properties which are being devoted

to transportation. By investment in a business dedicated to the public service the owner must recognize that, as compared with investment in private business, he cannot expect either high or speculative dividends, but that his obligation limits him to only fair or reasonable profit. * * * The act fixes the fair return for the years here involved, 1920 and 1921, at 5½ per cent, and the Commission exercises its discretion to add one-half a per cent. The case of Bluefield Waterworks & Improv. Co. v. Public Serv. Commission, 262 U. S., 679, 67 L. ed. 1175, 43 Sup. Ct. Rep. 679, is cited to show that a return of 6 per cent on the property of a public utility is confiscatory. But 6 per cent was not found confiscatory in Wilcox v. Consolidated Gas Co., 212 U. S., 19, 48, 50, 53 L. ed. 382, 398, 399, 48 L. R. A. (N. S.) 1134, 29 Sup. Ct. Rep. 192, 15 Ann. Cas. 1034; in Cedar Rapids Gas-light Co. v. Cedar Rapids, 223 U. S., 655, 670, 56 L. ed. 594, 604, 32 Sup. Cr. Rep. 389; or in Des Moines Gas Co. v. Des Moines, 238 U. S. 153, 172, 59 L. ed. 1244, 1253, P. U. R. 1915D, 577, 35 Sup. Ct. Rep. 811. Thus the question of the minimum of a fair percentage on value is shown to vary with the circumstances."

That statement has never been modified or overruled, and so far as we are advised is still the law.

Depreciation

Assuming that a schedule of fares which will yield to the Company a return of 6.26% on the value of its property is neither confiscatory nor unreasonable as a matter of law, the next question is whether the schedule adopted by the Commission in this case will in fact yield such a return. The answer to that question necessarily involves the allowance made for the depreciation of the Company's property used in the service to which it is dedicated. It is an elementary principle not only of constitutional law, but of common right, that such a Company must be permitted to earn such an increase as will not only yield a fair return on the fair value of its property, but which will be sufficient to enable it to keep its property at a constant level of efficiency, so that it will be adequate for the public needs, and so that the value upon which the return is based will not be lessened. Anything more than that would be unjust

to the public, anything less than that would be unjust both to the public and to the Company. For the public should not be required to pay rates based upon the present value of the property if that value is to be permitted to steadily depreciate, nor, should the Company's property be consumed in the public service without adequate provision for restoring to it the equivalent of its value. So that the Company is entitled to such an allowance as will not only adequately provide for current repairs, but for depreciation due to necessary retirements, obsolescence, and the diminishing utility of property which cannot be arrested by repairs. So much is self-evident, is conceded by the parties to this appeal, and does not appear to be questioned anywhere. Knoxville etc. vs. Water Company, 212 U. S. 1, Rose's Notes.

The allowance made for current repairs under the head of maintenance does not appear to be questioned, so that the only inquiry is whether the allowance for depreciation is adequate. The Commission in fixing the fare schedule allowed 5% on the gross revenue of the Company for depreciation, and estimated that that allowance would yield $883,544 in 1928 allowing for a decrease in the volume of traffic, and its opinion indicates that in reaching that conclusion it considered the cost and not the present value of the Company's depreciable property. Unquestionably there is authority for that method of calculating a proper depreciation reserve, but in our opinion it is artificial, illogical and unsound, and ought not to be approved, and since we cannot say that proper methods would not have produced a result which would have affected the rate schedule adopted, the case should be remanded to the Commission in order that it may consider and determine the proper allowance for depreciation in accordance with rules hereinafter stated, and if necessary re-adjust the rate schedule to cover any changes it may make in that allowance.

The allowance of a given percentage on the gross income of the Company as a method for computing depreciation is said to be justified by accounting usages, but in such a case as this we are not dealing with bookkeeping customs, but with substantive rights protected by constitutional guaranties, and there seems to be no logical reason why the depreciation should not be based upon the actual value

of the property itself, rather than upon vague and conjectural inferences drawn from the money the property earns. The accuracy of such a method must be largely subjective, since there is no apparent connection or relation between the income which property yields and the depreciation resulting from its use in earning that income. It is true that it is said to have been tested by more direct and intelligible methods but if that is so such methods should have been used in the first place, and not as mere checks upon a method not justified either by law or logic. But even so, if the conclusion actually reached was proper, the fact that it was reached by improper methods, would not justify us in disturbing it, so that the more important question is whether the base of the calculations by which it was tested was itself lawful. And that depends upon whether the Commission should have based its allowance for depreciation upon the original cost of the property, or upon its present value. It actually did use cost and not present value as the basis of its conclusion, and here again it must be said that there is authority for its procedure. But in our opinion it is justified by neither law nor right reason.

In valuing the property for rate making purposes the Commission based its conclusion upon its present value and not upon its original cost, and in fact the case of Havre de Grace Bridge Co. vs. P. S. C. supra left it no alternative. But if it was essential to adopt that method for ascertaining the value of the property to which the rates were applied, it is not easy to see why it should not be adopted in estimating the amount needed to replace that property when it is worn out or becomes obsolete and worthless. If the Company paid $100,000 for property now only worth $10,000, it would be grossly unfair to the public to base its annual depreciation on its cost, and if on the other hand the Company paid $10,000 for property now worth $100,000, it would be equally unfair to it to compel it to sell that property to the public at 10% of its real value. These conclusions seem to be self evident, and while there is authority to the contrary, they are supported by the reasoning in such case as the Havre de Grace Bridge Co. v. Public Service Com. supra, Knoxville vs. Water Co., supra, and Michigan Pub. Util. Con. vs. Mich. St. Tel. Co. 228 Mich. 658, and

from the standpoint of fair play both to the Company and the Public are inevitable. To require the Company to sell its service at rates which made no provision at all for the replacement or repair of the property when worn out or obsolete, would be plain confiscation, and to require it to sell it at rates which make an inadequate provision for the return of its value when worn out or obsolete as a result of public service can be no less.

Counsel for the Commission suggest that to restore value would be to "require the financing of additions to plant, to the extent of the excess of replacement over original cost of property replaced, by the public, which would in turn have to pay a return on the capital thus required." The meaning of that suggestion is not altogether clear, but if it is that the Company is entitled to the return of any thing less than the value of its property it cannot be sustained. Money deducted from earnings to replace equipment which has become worn out or obsolete, by other equipment of the same character and the same value, adds nothing to Company's resources but merely keeps them at the same level.

In testing the result arrived at by allowing a depreciation reserve of 5% on the gross income of the Company, the Commission appears to have been largely influenced by the history of the Company during the last few years. That is it appears to have concluded that since the Company had not actually expended its entire depreciation reserve in replacement, that it must have been sufficient. But that does not follow. The mere fact that it did not spend its entire reserve on replacements is not conclusive evidence that replacements which were not made, were not needed. For the Company may have been influenced by such considerations as the condition of the money and supply markets, whether the replacements should be postponed to harmonize with contemplated changes in equipment, or whether the maintenance of a substantial reserve was necessary to financial stability, and we do not regard that as an adequate test. But in our opinion there should have been some physical inspection of the property and investigation of the probable useful life of the property as shown by the experience of this company and other Companies using similar property in the same way, and an estimate made based in part at least upon such an investigation of the probable annual de-

preciation. The Commission suggests that such a test could only be properly applied to accrued depreciation, but we see no force in that argument. If an inspection of equipment shows it to be in a fair condition of repair, and experience and judgment indicate that with reasonable care it should last for a reasonably certain time before becoming worthless, that would certainly seem to be a more reliable guide in determining its annual depreciation than the amount of money it earned, or, the fact that when similar equipment became worthless, the Company did not see fit to replace it.

The Company also takes sharp issue with the Commission on its policy in respect to obsolescence as an element of depreciation.

It is difficult because of the method of calculation adopted to determine to what extent the Commission did consider that question, except that it is clear that it did not allow for extraordinary obsolescence, and in that conclusion we are in complete accord. But ordinary obsolescence is a tangible and concrete thing, for which some allowance should be made in any estimate of depreciation in such property as that operated by the Company. Experience infallibly indicates, that as a result of social or economic changes, or the progress of science and the improvement of mechanical and electrical equipment some part of the Company's property will from time to time become out of date, and unsuited to its present needs, and should be retired. Such obsolescence is really depreciation and should be considered in any fair or reasonable estimate of the probable annual depreciation of the Company's property. Extra ordinary obsolescence however is quite another thing, and by extraordinary obsolescence we mean an extensive supersession of property used for the transmission or the generation of power, or instrumentalities used for the transportation of passengers. Such obsolescence has seldom occurred in the past and whether it will occur in the future at all, or if it does when it will occur, and how extensive it will be are all matters of unrestrained speculation and conjecture, and we know of no theory upon which any depreciation allowance could be made to cover it. If it ever does occur, it can be considered by the Commission in the light of actual facts, and such allowance and adjustments made as may be proper under the circumstances, but until it does

occur it is entirely irrelevant to any consideration of the proper allowance to be made to cover the anticipated annual depreciation in the Company's property.

The last question raised by the appeal is whether the action of the Commission in abolishing the second fare zone on the Halethorpe line was unlawful, or unreasonable. In objecting to that action the Company has used the term "confiscation" with considerable freedom and some looseness. If, as we have held, rates yielding a return of 6.26 are not confiscatory in law, then it is difficult to see how extending the city fare zone to include Halethorpe is confiscatory, for any loss occasioned by the extension is absorbed by the increased fares and does not in theory affect the rate of return, and if in fact it does affect that rate, such adjustment may be made by the Commission as actual experience shows to be necessary to enable the Company to earn a fair return on its whole property. Naturally some parts of the Company's system are more profitable than others, but that does not make it necessary to establish different fares for the different lines, varying in amount with the prosperity of the several lines. Some reliance was placed upon a supposed "City Line Standard," but the city line is a mere arbitrary invisible line of separation between political units, and the "standard" was established apparently with the consent of the Company that there might be a single fare within the city limits, and has certainly been disregarded in at least several instances. The extension to Halethorpe is not profitable, was built at a loss at the request of the inhabitants of the territory served by it, and it is intimated, upon their assurance that they would not ask that it be included in the city fare zone. It is nevertheless a part of the entire system, and the rates charged on it should be measured to some extent at least by the standards applied to other parts of the system.

The Commission found as a matter of fact that "The total distance from the center of the City that may be traveled on the Halethorpe line is a fraction more than five miles, while the single fare zones on nine other lines extending into the suburbs are longer than the two zones to Halethorpe. As pointed out by counsel, the first fare zones of six of these nine lines extend a substantial distance beyond the Baltimore City limits. Five of them have no sec-

and fare zones whatever." That finding was based upon undisputed evidence, and in our judgment afforded a substantial basis for the action of the Commission in including the entire Halethorpe line within a single fare zone, and we cannot say that it was either unlawful or unreasonable, and we will not therefore disturb that part of its order which deals with that question. N. C. Ry. Co. v. P. S. Com. 122 Md. 255.

For reasons already stated it follows that so much of the decree from which this appeal was taken as vacates that part of the order of the Commission which fixes the schedule of fares to be charged by the Company, and so much of said decree as enjoins the enforcement of that part of said Order was erroneous, but because that schedule was in part based upon an allowance for annual depreciation arrived at by unlawful and unreasonable methods and by the use of an unlawful and unreasonable basis, that part of the decree will neither be affirmed nor reversed, but the case will be remanded in order that the Commission may further consider the question of depreciation and make any changes in the rate schedule which may be necessary and requisite to yield to the Company a fair and reasonable return upon the fair value of its property. And so much of the decree as affirms that part of the Order which extends the first fare zone of the Halethorpe Line to the terminus thereof, will be affirmed.

Decree affirmed in part and reversed in part and case remanded for further proceedings in accordance with the views expressed in this Opinion, each party to pay one half the costs.

In Court of Appeals of Maryland

[Title omitted]

Concurring Opinion—Filed July 23, 1928

Adkins, J., filed the following separate concuring opinion:

It will probably be thought a work of supererogation for one who agrees with the conclusions reached in the able

opinion written by Judge Offut for the Court to file a concurring opinion. When the opinion is read as a whole there should be no misconception as to its meaning so far as any expressions therein are necessary to the conclusions. But it is always possible in reading detached expressions and considering them out of their setting to attribute to them a bearing not intended by the writer or by the Court.

For that reason, and to make my own position clear, I file this memorandum, in which I desire to state what I understand to be the meaning of Judge Offut and of the Court as to the matters herein referred to.

It was not intended, as I understand, to suggest that there is anything in the record to indicate that a ten cent fare would be more than the service is worth if such a fare should be found necessary to pay for the cost of the service and to give the company a fair return on the value of its property.

Nor, as I understand, was it intended to indicate that a finding of the Commision as to the proper amount to be allowed annually for accruing depreciation would be conclusive and unreviewable, even though the commission should base that finding on present value rather than the original cost, if the amount so found should be manifestly unreasonable on the whole evidence. Here, the question of confiscation is involved; and in any hearing by a Court on such a question it must be satisfied, not necesarily that it would have reached the same conclusion on the evidence, but, at least, that the conclusion reached by the commission was fairly deducible from the evidence. The opinion clearly indicates the kind of evidence on which a finding as to depreciation should be based.

There are some expressions in the opinion with which I am not in full accord, but they are not necesary to the conclusions reached. For instance, I do not agree with all that is said in what is designated in the opinion as the third method of approach to the question whether the schedule of fares authorized by the Commission is confiscatory within the meaning of the State and Federal Constitutions, or unlawful and unreasonable within the meaning of the statute creating the Commission.

True Copy. Test: James A. Young, Clerk of the Court of Appeals.

IN COURT OF APPEALS OF MARYLAND

[Title omitted]

DISSENTING OPINION BY CHIEF JUDGE BOND—Filed Aug. 2, 1928

I concur in what Judge Parke has written, but would add these remarks in elaboration of some portions of it. It seems to me that so long as the present equipment and service of the utility are necesary to the public, it is a mistake to say that the ordinarily fair return on that property may be pared down at all merely because there were formerly more riders for it, more profitably distributed. The fair return on a utility property, for the service rendered with it, is to be calculated on present conditions only. The Supreme Court of the United States has said that the problem of a fair return is a problem of day by day, month by month, and year by year, as service continues. Denver v. Denver Water Co., 246 U. S. 178, Detroit United Ry. v. Detroit, 248 U. S. 429, I take it that if a new owner , a purchaser at a sale, for instance should offer to meet the existing need with the same or similar equipment, he could not be denied the ordinary fair return on property of such value merely because conditions were better at some previous time. Another and different situation would be presented if it could be found as a fact that this sort of service cannot get the fair return because the service would not be worth so much to users; but I do not see the foundation for that finding in this case. The evidence given on the point goes only so far as to predict that a fare of ten cents would keep away two per cent of the present users. And, beyond that testimony, if the full fair return requires a fare of so much, ten cents, comparison of that amount with prices generally paid for other services, bus fares, for instance, or fares of steam or interurban electric railways for similar mileage, or prices paid for cheap commodities and entertainments, seems to me to render it impossible to say that it is more than street railway transportation for an average of some miles is worth to riders.

Judge Parks authorizes me to add that these views are in accordance with his own.

IN COURT OF APPEALS OF MARYLAND

[Title omitted]

DISSSENTING OPINION OF JUDGE PARKE—Filed Aug. 2, 1928

While agreeing with the conclusions of the Court that the Commission's method of determining the depreciation reserve was improper and that its order abolishing the second fare to Halethorpe was not unlawful, the writer believes the limitation of the rate of return to 6.26 per centum was unlawful and that the conclusions reached by the trial Judge were substantially correct.

As was declared in the Railroad Commission Cases, 116 U. S. 307, at p. 331, "This power to regulate is not a power to destroy, and limitation is not the equivalent of confiscation. Under pretense of regulating fares and freights, the State cannot require a railroad corporation to carry persons or property without reward; neither can it do that which in law amounts to a taking of private property for public use without just compensation, or without due process of law." If a public utility is deprived by a rate regulation of the right to receive a fair return upon the fair value of its property used in the public service, its property is confiscated, and the regulation is void, whether enacted by a legislative assembly or imposed by a commission pursuant to delegated authority. The determination of the constitutionality of a rate "depends upon the valuation of the property, the income to be derived from the proposed rate, and the proportion between the two—pure matters of fact," as was said by Mr. Justice Holmes in Prentis vs. Atlantic Coast Line, 211 U. S. 210, 228. To adjudicate the value of the property of a public utility or to determine its earning capacity, or the resultant return upon this value of a proposed rate is essentially the exercise of a judicial function; and, for that reason, the statute provides for a review by the court in order that the owners of a utility be not deprived of their property without due process of law. Minnesota Railroad Commission Cases, 134 U. S. 418, 457; Reagan vs. Farmers Loan & Trust Co., 154 U. S. 362; Ohio Valley Co. vs. Ben Avon Borough, 253 U. S. 287. And this constitutional right to a judicial hearing in rate-making

cases embraces not merely questions of law but also questions of fact, which are generally controlling. Supra.

So, the statute provided for a judicial inquiry by an action at law "to vacate and set aside any such order on the ground that the rate or rates, tolls, charges, schedules, joint rate or rates, fixed in such order is unlawful, or that any such regulation, practice, act or service fixed in such order is unreasonable." Code, Art. 23, sec. 404. The mere provision for judicial review is sufficient to demonstrate that the findings of fact by the Commission are not made conclusive; and the statute deals with the point and makes the "determination, requirement, direction or order of the commission complained of" only prima facie correct by providing that "the burden of proof shall be upon the party adverse to such commission or seeking to set aside any determination, requirement, direction or order of said commission, to show by clear and satisfactory evidence that the determination, requirement, direction or order of the commission complained of is unreasonable or unlawful, as the case may be." Code, Art. 23, sec. 408; Public Service Comm. vs. Byron, 153 Md. 464, 470, 471, 479 et seq.

These provisions of the statute impose upon the court the duty of weighing and adjudging the facts upon which the unlawfulness or unreasonableness of the Commission's findings in the instant case depends, and, therefore, the Court cannot accept as final any determination of fact involved in the present controversy but only give it the prima facie presumption of correctness, so where the court thus finds from the facts that the action of the commission was either unlawful or unreasonable, it is not only the province but the plain and imperative duty of the court so to decide.

It is held by the Commission that the subsisting street railway service is a method of transportation whose maintenance is necessary in the public interest, carrying more passengers during the hours of peak load than ever before in its long history. The present system is, therefore, far from being moribund. So, whatever the risks of its urban business, none is greater than its operation under less than a fair rate of return and the uncertainty that this ruinous situation will be surely, timely and adequately relieved. A failure to grant such relief invites disaster; and stinted

relief often simply delays a crisis which when it arrives will prove immediately disastrous to the owners of the utility and, in the end, to the interests of the public. The position of the utility is made graver, and the public will not ultimately be benefited by the ruling in the pending case since, in the opinion of the writer of this dissent, the weight of the evidence clearly and satisfactorily establishes that the Commission's limitation of the fair rate of return to 6.26 per centum of the value of its property is confiscatory and, so, unlawful. Bluefield Company vs. Public Service Commission, 262 U. S. 679, 694-695.

Where the service rendered by the public utility is necessary, the owners of the utility are entitled to a return which will cover the expenses of operation and a fair return upon the property used. The right to compensation is fundamental since the property used represents capital invested, and since the continued existence of the utility depends upon the ability to sustain its credit and to procure its capital requirements from time to time, a fair return on the property used means such a return as will induce capital to supply these financial demands. Capital is the most fluid and independent of commodities and none is more subject to the law of competition; and the rate at which money is borrowed is the best index of the financial position and condition of the borrower. Under existing circumstances, the utility can not find a market for preferred or common stock in order to obtain money for capital expenditures, and it has been compelled to procure funds through the issue of bonds and short term notes. In the opinion of the Court is found a table showing the cost to the utility of slightly over $18,000,000.00 of money borrowed from July 1st, 1920, to March 1st, 1927, on bonds and securities. The average cost was 7.23 per centum. The lowest cost was 6.6 per centum for money borrowed in 1922 on bonds. The last loan was on March 1st, 1927, when $2,000,000.00 of three years 6 per centum gold notes were issued at a cost to the utility of 7.32 per centum. Without a sufficient supply of capital there can be no efficient nor economical administration of a municipal street railway system; and the onerous cost of these borrowings reflects the extent to which the credit of the utility has been impaired by insufficiency of the revenues of the Company and

the uncertainty of its being allowed an increased rate of return on the value of the property which it employs for the public convenience. It would seem inevitable that a fair return on the property should be more than the cost of money obtained through the sale of bonds and other securities. McCardle vs. Indianapolis Water Co., 272 U. S. 400, 419, 420. The clear and convincing testimony in this case is that a basic rate of 6.26 per centum is not a fair return upon the property used, nor sufficient to enable the utility to maintain its credit or to secure its necessary capital at a reasonable cost. This evidence cannot be denied its legal effect by comparing the fares and rates of return allowed to street railway utilities of other municipalities of similar size, where the local conditions and hazards are different and a park tax equivalent to one-half a cent for every fare is not added. Such evidence is entitled to some weight in considering the lawfulness of the rate of return in question, but it is obvious that its value is slight when so much depends upon the circumstances of every case and the nature and method of determining the rate base upon which the return is allowed.

It follows that this testimony cannot prevail over the clear and satisfactory evidence on the part of the utility that a rate of return of 6.26 per centum is not compensatory and that the case should have been remanded to the Commission to ascertain a rate which would not be confiscatory. Public Ser. Comm. vs. N. C. Ry. Co., 122 Md. 355, 389, 390.

IN COURT OF APPEALS OF MARYLAND

HAROLD E. WEST, Chairman, and J. FRANK HARPER and STEUART PURCELL, Members, Constituting the Public Service Commission of Maryland, Appellants,

vs.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, Appellee.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, Appellant,

vs.

HAROLD E. WEST, Chairman, and J. FRANK HARPER and STEUART PURCELL, Members, Constituting the Public Service Commission of Maryland, Appellees

PETITION FOR APPEAL AND ORDER ALLOWING SAME—Filed Aug. 25, 1928

To the Honorable Carroll T. Bond, Chief Judge of the Court of Appeals of the State of Maryland:

The petition of The United Railways and Electric Company of Baltimore, a body corporate, appellee and cross-appellant in the Court of Appeals of Maryland, plaintiff in the Circuit Court No. 2 of Baltimore City and hereinafter called "plaintiff," respectfully shows:

1. That as fully appears from the record in this cause, this cause is and was in the Circuit Court No. 2 of Baltimore City and in the Court of Appeals of Maryland a suit where was drawn in question the validity of certain statutes of the State of Maryland, viz., statutes relating to the Public Service Commission of Maryland and a certain order and/or orders of the Public Service Commission of Maryland purporting to have been made pursuant to said statutes, on the ground of said statutes (including said order and/or orders) being repugnant to the Constitution of the United States, and the final decree of the Court of Appeals of Maryland made and entered in said cause on July 16, 1928, was and is a decision in favor of the validity of said statutes (including said order and/or orders).

2. Your petitioner, for the reasons specified in the assignment of errors which is filed herewith, conceives itself aggrieved by said final decree made and entered by the Court of Appeals of Maryland on July 16, 1928.

Wherefore your petitioner prays that an appeal may be allowed herein from the Court of Appeals of Maryland to the Supreme Court of the United States and that an order may be passed fixing the amount of the bond on said appeal.

Venable, Baetjer & Howard, Haman, Cook, Chesnut & Markell, Henry H. Waters, Counsel for the United Railways and Electric Company of Baltimore, Appellant.

And now, to wit, on August 25th, 1928, it is ordered that an appeal from the Court of Appeals of Maryland to the Supreme Court of the United States be allowed as prayed, upon the filing of a bond in the sum of five hundred dollars ($500) with good and sufficient security and Fidelity and Deposit Company of Maryland is accepted as surety on said bond and said bond is now approved.

Carroll T. Bond, Chief Judge of the Court of Appeals of the State of Maryland.

IN COURT OF APPEALS OF MARYLAND

[Titles omitted]

ASSIGNMENT OF ERRORS—Filed Aug. 25, 1928

Now comes The United Railways and Electric Company of Baltimore, a body corporate, appellee and cross-appellant in the Court of Appeals of Maryland, plaintiff in the Circuit Court No. 2 of Baltimore City and hereinafter called "plaintiff," and for its assignment of errors shows:

1. That the Court of Appeals of Maryland erred in not affirming the decree of the Circuit Court No. 2 of Baltimore City in so far as said decree adjudged and decreed that the rates fixed by the Order No. 12639 of the Public Service Commission of Maryland passed on February 10, 1928, and said order and prior orders limiting rates charged by the

plaintiff are unconstitutional and fail to allow to the plaintiff a fair return on the fair value of its property, (i. e., they deprive the plaintiff of its property without due process of law, contrary of the Fourteenth Amendment of the Constitution of the United States) and vacated and set aside said Order No. 12639 in so far as the same purports to limit the rates of the plaintiff and enjoined the defendants (appellants and cross-appellees in the Court of Appeals of Maryland, defendants in the Circuit Court No. 2 of Baltimore City and herein called "defendants") against enforcing against the plaintiff the provisions of said Order No. 12639, or any prior orders, in so far as the same limit or purport to limit the rates of fare to be charged by the plaintiff.

2. That the Court of Appeals of Maryland erred in not holding that a schedule of fares which permits the plaintiff to earn a return of not more than 6.26 per cent. on the fair value of its property is confiscatory and deprives the plaintiff of its property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States, and in holding that Order No. 12639 of the Public Service Commission of Maryland and the schedule of rates fixed thereby, (with only such increases in said fares as may be necessary and requisite to yield to the plaintiff a return of 6.26 per cent. upon the fair value of its property,) are not confiscatory and do not deprive the plaintiff of its property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States.

3. That the Court of Appeals of Maryland erred in holding that the question whether fares which permit a return of only 6.26 per cent. are confiscatory "must be approached * * * from the standpoint of the State" and in such approach "factors * * * such as the nature and necessity of the service, the effect of its continuance or withdrawal, both upon the security holders of the corporation, and upon property values, and the welfare of the people in the territory served by it, the extent to which the State itself is a partner in the enterprise, and the circumstances and conditions under which the (plaintiff) acquired and exercises its franchises and privileges may become of paramount and controlling importance"; thus holding that, under the guise of "approaching" the question what is a fair

return and giving weight to various "factors" in the question, the question may actually be ignored and evaded and supplanted by various so-called "factors" which do not properly control or affect the question at all.

4. That the Court of Appeals of Maryland erred in holding that the plaintiff's constitutional right to a fair return on the fair value of its property affords no excuse for "increasing (its rates) to a point which will not only be burdensome to the traveling public but will at the same time yield to the (plaintiff) a greater return that it has ever received, and greater than that actually received by others operating in the same field elsewhere under substantially the same conditions" (*i. e.*, under confiscatory rates), and that "whether a given rate is burdensome to the public involves an extremely difficult and troublesome question, the answer to which, except in extreme cases, can only rest in the judgment of the Commission operating upon varying factors each of which is entitled to some weight, but no one of which ordinarily is controlling," thus holding that private property embarked in a utility business does not "rest secure under the constitutional protection which extends * * * to the right to receive just compensation for the service given to the public" (The Minnesota Rate Cases, 230 U. S. 352, 434) but that this constitutional protection "can rest only in the judgment of the Commission" and that past confiscation of the plaintiff's property and present confiscation elsewhere legalize perpetual confiscation of the plaintiff's property.

5. That the Court of Appeals of Maryland erred in holding that "in determining whether the rates fixed by the Commission are confiscatory we are finally remitted to a few simple realities, such as the past earnings of the Company, (to which the Court of Appeals gives effect precisely the opposite of that given by the Supreme Court of the United States), the returns usually received by other companies engaged in the same business under somewhat similar conditions (i. e., under confiscatory rates), the rates which the (plaintiff) has voluntarily fixed for its service in the past, the decrease in the purchasing power of the dollar, and the effect which other orders of the Commission have had upon the earning power of the (plaintiff)", but that the last two of these factors (regarded by the Court

of Appeals as tending to support the plaintiff's position) "were considered fully by the Commission when it fixed the base fare at 7½ cents in 1924, and in view of that finding and of the further fact that the record does not disclose any data sufficiently specific to enable us to say that it was unlawful, we are not inclined to give them any controlling weight now"; thus holding (1) that the question whether rates are confiscatory may be determined from "simple realities" which do not properly affect the question at all and (2) that on this question of confiscation a previous rate order is (unless now specifically proved to have been unlawful) res judicata as to facts then considered by the Commission, although (a) commission rate orders do not so operate and (b) this 1924 rate order could not so operate because the value of the plaintiff's property had not then been determined at all and in that case the question of confiscation could not be and was not determined by the Commission and the Commission's own views were expressly tentative, pending determination of the value of the plaintiff's property.

6. That the Court of Appeals of Maryland erred in not holding that failure of a State to "provide a fair opportunity for submitting" the question of confiscation "to a judicial tribunal for determination upon its own independent judgment as to both law and facts" is a deprivation of liberty and property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States, and in holding that the Supreme Court of the United States (in so holding) did not mean what it said but meant precisely the opposite.

7. That the Court of Appeals of Maryland erred in confusing the opinion of the Supreme Court in McCardle vs. Indianapolis Water Works Co., 272 U. S. 419, with the dissenting opinion, treating the dissenting opinion as an "interpretation" instead of a negation of the Court's opinion, and thus acting on that case as not deciding what it very clearly did decide, viz., that on the evidence therein and the authority of recent decisions in other cases, rates yielding a return of less than 7 per cent would be confiscatory.

8. That the Court of Appeals of Maryland erred in holding that decisions of the Supreme Court of the United States that certain utilities are entitled to certain returns on the value of their properties "are uniformly found to be based upon facts peculiar to the several cases" and in the instant case the Court of Appeals "is little aided by what" the Supreme Court "may upon different facts have found to be lawful or confiscatory, fair or unreasonable rates."

9. That the Court of Appeals of Maryland erred (while properly holding that the schedule of fares fixed by Order No. 12639 of the Public Service Commission of Maryland was based upon an allowance for annual depreciation arrived at by unlawful and unreasonable methods and by the use of an unlawful and unreasonable basis, viz., the basis of costs of the plaintiff's depreciable property instead of the proper basis, its present value), in nevertheless refusing to vacate or set aside, or enjoin enforcement of, said order or said schedule of fares, although the fact is and the evidence abundantly shows without substantial evidence to the contrary, and the Court of Appeals in effect so holds or recognizes, that the present value of the Plaintiff's depreciable property is substantially in excess of cost, the Commission's allowance for annual depreciation based on cost is grossly inadequate and the schedule of fares based on said allowance is grossly inadequate to yield even a return of 6.26 per cent. (erroneously held by the Court of Appeals to be sufficient to escape confiscation) and therefore is confiscatory and deprives the plaintiff of its property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States.

10. That the Court of Appeals of Maryland erred (while properly holding that, because by said Order No. 12639 the annual allowance for depreciation is based on cost, instead of the present value, of the plaintiff's depreciable property and therefore is inadequate, the schedule of fares fixed by said order is inadequate to yield even a return of 6.26 per cent on the fair value of the plaintiff's property and is confiscatory and deprives the plaintiff of its property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States) in never-

theless refusing to vacate or set aside, or enjoin enforcement of, said order or said schedule of fares.

11. That the Court of Appeals of Maryland erred (when holding that Maryland statutes deprive all Maryland courts of the right and power to enjoin enforcement of confiscatory rate orders, thereby deprive the plaintiff of all judicial remedy against the enforcement of confiscatory rate orders, and in lieu of all judicial remedy merely remand the plaintiff for relief against confiscation to the confiscators themselves) in not holding that Maryland statutes, so construed and applied, deprive the plaintiff of its liberty and property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States.

12. That the Court of Appeals of Maryland erred (when holding that by reason of Maryland statutes, one confiscatory rate order might be vacated by the Courts, leaving prior orders still more confiscatory in force, but all unconstitutional orders can not be vacated by the Courts, thus holding that the Courts can protect constitutional rights against one unconstitutional order but, when all orders are unconstitutional, can only remand the plaintiff to further action by the confiscators) in not holding that the Maryland statutes, so construed and applied, deprive the plaintiff of its liberty and property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States.

13. That the Court of Appeals of Maryland erred (when holding that Maryland statutes not only empower the Public Service Commission to regulate the plaintiff's rates but also deprive the plaintiff of its constitutional right, subject to regulation, to initiate and make rates) in not holding that Maryland statutes, so construed and applied, deprive the plaintiff of its liberty and property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States.

14. That the Court of Appeals of Maryland erred (when holding that even the fact that all Commission rates are confiscatory does not "authorize * * * the (plaintiff) to fix" its own rates (subject to the continuing power of regulation) or the Courts to set aside all unconstitutional

Commission orders and "leave the question of rates * * * to the discretion of the (plaintiff)" (subject to regulation), but "under the statute the power to (fix rates) is in the Commission alone") in not holding that the Maryland statute, so construed and applied, makes the Commission "the financial manager" of the plaintiff and clothes the Commission "with the general power of management incident to ownership" (Southwestern Tel. Co. v. Public Service Commission, 262 U. S. 276, 289) and thereby deprives the plaintiff of its liberty and property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States.

15. The Court of Appeals of Maryland erred in not reversing the decree of the Circuit Court No. 2 of Baltimore City in so far as said decree dismissed the plaintiff's bill of complaint as to that portion of Order No. 12639 of the Public Service Commission of Maryland which extended the first fare zone on the plaintiff's Halethorpe line to the terminus of said line at Halethorpe, and in not adjudging and decreeing that said portion of said order is unconstitutional and deprives the plaintiff of its property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States, and in not vacating and setting aside said portion of said order and enjoining the defendants against enforcing the provisions of said portion of said order.

Wherefore the plaintiff prays that the said decree of the Court of Appeals of Maryland made and entered on July 16, 1928, be reversed and that said Court may be directed to enter a decree in favor of the plaintiff.

Venable, Baetzer & Howard, Haman, Cook, Chesnut & Markell, Henry H. Waters, Counsel for the United Railways and Electric Company of Baltimore, Appellant.

Bond on Appeal for 500.00, approved and filed August 25, 1928, omitted in printing.

Citation, in usual form, showing service on Thomas J. Tingley et al., filed August 25, 1928, omitted in printing.

IN COURT OF APPEALS OF MARYLAND

[Titles omitted]

PETITION FOR CROSS-APPEAL AND ORDER ALLOWING SAME —Filed Sept. 19, 1928

To the Honorable Carroll T. Bond, Chief Judge of the Court of Appeals of the State of Maryland:

The petition of Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, constituting the Public Service Commission of Maryland, appellants and cross-appellees in the Court of Appeals of Maryland, defendants in the Circuit Court No. 2 of Baltimore City, and hereinafter called Commission, respectfully shows:

(1) That, as fully appears from the record in this case, this case is, and was in the Circuit Court No. 2 of Baltimore City, and in the Court of Appeals of Maryland, a suit where was drawn in question by the United Railways and Electric Company of Baltimore, hereinafter called Company, the validity of a certain order and/or orders of the Public Service Commission of Maryland, on the ground of the same being repugnant to the Fourteenth Amendment to the Constitution of the United States.

(2) The validity, in particular, of Order No. 12,639 of the Commission, passed February 10, 1928, was drawn in question, on the ground that the said Order established rates to be charged by the Company for street railway service in Baltimore City and vicinity, which resulted in a rate of return of 6.26 per cent, to the said Company, which rate of return, it was alleged, would be confiscatory within the prohibition of the Fourteenth Amendment to the Constitution of the United States; and on the further ground, inter alia, that the Commission, in fixing the said rates, calculated the annual depreciation allowance granted to the Company so as to restore the original cost of property consumed or retired in service, rather than the pres-

ent day value of such property, which action was also alleged by the Company to be confiscatory within the prohibition of the said Amendment. The rates in question, fixed by the said order of the Commission, were a cash fare of nine cents, with three tokens for twenty-five cents.

(3) The Court of Appeals of Maryland held that the rate of return estimated to result from the said rates of fare was not confiscatory, but further held that the action of the Commission in restoring through the annual depreciation allowance of the Company the cost of depreciable property rather than its present day value, as above, was confiscatory, and hence that the Company might not be actually receiving the return of 6.26 per cent, estimated by the Commission to be yielded by the rates established as above. The Court of Appeals accordingly remanded the case, with directions to the Commission to further consider the question of depreciation, investigate the property of the Company with a view to the determination of its condition and profitable life, and if necessary, readjust the rate schedules to reflect any increased amount which might be found necessary, in order to restore to the Company the present day value, rather than cost, of property consumed or retired in service.

(4) This decree of the Court of Appeals of Maryland was passed on July 16, 1928. Thirty days thereafter the mandate of the Court of Appeals was directed to and received by the Circuit Court No. 2 of Baltimore City, which Court on August 31st, 1928, entered an order remanding the case to the Commission for further proceedings as directed by the Court of Appeals.

(5) The Company, on August 25, 1928, secured an order from the Chief Judge of the Court of Appeals of Maryland allowing an appeal from the portions of the said decree of the Court of Appeals, adverse to its contentions, including therein the contention that the rate of return estimated to be yielded by the rates fixed by the defendants is confiscatory within the prohibition of the Fourteenth Amendment to the Constitution of the United States, that the action of the Court, in not vacating, setting aside or enjoining the rates fixed by the Comission, instead of

remanding the case, in view of its finding as to the proper basis for the annual depreciation allowance, is also confiscatory; and that the action of the Court in sustaining the defendants with respect to a provision of their order directing the extension of the single fare zone to the community of Halethorpe, situated beyond the City limits of Baltimore, was also confiscatory.

(6) That the question of whether cost or value of property consumed or retired in service should be restored through the annual depreciation allowance fixed for the Company, is an integral and indispensable part of the present case, and of the decree entered by the Court of Appeals therein, and that the case cannot be properly or adequately considered without determining it, and that the decree of the Court of Appeals of Maryland is single and inseverable, and can not properly be reviewed without consideration of that question.

(7) The Commission has already ordered an investigation of the condition of the property of the Company, pursuant to the direction of the Court of Appeals, and has by order directed that further proceedings be held, beginning on the 15th day of November, 1928, to determine the proper amount to be allowed the Company for depreciation, pursuant to the direction contained in the decree of the Court of Appeals. Any increase in fare resulting from these hearings will affect the amount of revenue received by the Company and, if the basis for fixing the depreciation allowance determined by the Court of Appeals be erroneous, will affect the rate of return received by it.

(8) The Commission is advised and believes that the decree of the Court of Appeals of Maryland, properly construed, determines that it is confiscatory within the prohibition of the Fourteenth Amendment to the Constitution of the United States for the Commission to so calculate the Company's annual allowance for depreciation as to restore the cost, rather than the present day value, of property consumed or retired in service, and hence determines a Federal question of substance not theretofore determined by the Supreme Court of the United States, in a manner not in accord with the decisions of that Court in cases involving related questions, and unsound and untenable, and in conflict with the trend of authorities.

(9) Your petitioners, for the reasons specified in the assignment of errors which is filed herewith, conceive themselves aggrieved by the said final decree made and entered by the Court of Appeals of Maryland on July 16, 1928, in so far as the same determines that the restoration through the annual depreciation allowance to the Company of the cost, rather than the present day value, of its property, consumed or retired in public service, is confiscatory, within the prohibition of the Fourteenth Amendment to the Constitution of the United States.

Wherefore your petitioners pray that a cross-appeal may be allowed herein from the Court of Appeals of Maryland to the Supreme Court of the United States and that an order may be passed fixing the amount of the bond on said cross-appeal.

Thomas J. Tingley, Raymond S. Williams, Counsel for Harold E. West, Chairman, et al., Constituting the Public Service Commission of Maryland, Cross-appellants.

Order

And now, to wit, on September 19th, Nineteen Hundred and Twenty-eight, it is ordered that an appeal from the Court of Appeals of Maryland to the Supreme Court of the United States be allowed as prayed, upon the filing of a bond in the sum of Five hundred dollars ($500), with good and sufficient security and United States Fidelity and Guaranty Company is accepted as surety on said bond and said bond is now approved.

Carroll T. Bond, Chief Judge of the Court of Appeals of the State of Maryland.

Service of a copy of the within Petition for Cross Appeal is hereby Admitted this 19th day of September 1928.

Herman, Cook, Chesnut & Markell, Venable, Baetjer & Howard, Counsel for United Railways & Electric Company of Baltimore, Cross-Appellee.

IN COURT OF APPEALS OF MARYLAND

[Title omitted]

ASSIGNMENT OF ERRORS ON CROSS-APPEAL OF HAROLD E. WEST ET AL., CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND—Filed Sept. 19, 1928

Now come Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, constituting the Public Service Commission of Maryland, appellants and cross-appellees in the Court of Appeals of Maryland, defendants in the Circuit Court No. 2 of Baltimore City, and hereinafter called Public Service Commission of Maryland, and for their assignment of errors show:

1. That the Court of Appeals erred in not reversing the decree of the Circuit Court No. 2 of Baltimore City, insofar as said decree adjudged and decreed that the annual depreciation allowance of the United Railways and Electric Company of Baltimore, fixed by the Order No. 12,639 of the Public Service Commission of Maryland, passed on February 10, 1928, should be calculated to restore to the said Company the present value of its depreciable property, and that calculating said allowance so as to restore to the Company the cost of its depreciable property, (as was done by the said Commission in the said order), was confiscatory, and deprived the Company of its property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States.

2. That the Court of Appeals of Maryland erred in holding that the annual depreciation allowance of The United Railways and Electric Company of Baltimore, fixed by the Order No. 12,639 of the Public Service Commission of Maryland, passed on February 10, 1928, so as to restore to the Company the cost of its depreciable property, and not the present value thereof, was confiscatory, and deprived the Company of its property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States.

Wherefore the Public Service Commission of Maryland prays that the said decree of the Court of Appeals of Mary-

land made and entered on July 16, 1928, be reversed and that said Court may be directed to enter a decree in favor of the Public Service Commission of Maryland.

Thomas J. Tingley, Raymond S. Williams, Counsel for the Public Service Commission of Maryland, Cross-appellants.

Service of a copy of the within Assignment of Errors on the Cross-Appeal of the Public Service Commission of Maryland is hereby admitted this 19th day of September, 1928.

Haman, Cook, Chesnut and Markell, Venable, Baetjer and Howard, Counsel for United Railways and Electric Company of Baltimore, Cross-appellee.

Bond on cross apepal for $700.00, approved and filed Sept. 19, 1928, omitted in printing.

Citation, in usual form, showing service on Harmon, Cook, Chesnut & Markell et al., field September 19, 1928, omitted in printing.

Clerk's certificate to foregoing transcript omitted in printing.

IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1928

No. 464, No. 465

STIPULATION AS TO PRINTING RECORD—Filed Sept. 22, 1928

In lieu of designation and counter-designation by the respecive parties to the above appeal and cross-appeal of the parts of the record to be printed, it is hereby stipulated and agreed as follows:

Both parties to the above appeal and cross-appeal state that in their opinion the whole of the record as filed is neces-

sary for the consideration of the two cases, that said record has been printed and used upon the hearing in the Court below, viz., the Court of Appeals of Maryland, that twenty-seven (27) copies of said record as printed for use in the Court of Appeals of Maryland have been transmitted to the Clerk of the Supreme Court of the United States and that said copies so printed may be used by the Clerk of the Supreme Court of the United States in the preparation and as a part of the printed record of the Supreme Court of the United States in both the above entitled cases, viz., the above appeal and the above cross-appeal.

Chas. McH. Howard, Chas. Markell, Counsel for the United Railways and Electric Company of Baltimore, Appellant and Cross-appellee. Raymond S. Williams, Counsel for Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, Constituting the Public Service Commision of Maryland, Appellees and cross-appellants.

[File endorsement omitted.]

IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1928

No. 464

STATEMENT OF POINTS TO BE RELIED UPON—Filed Sept. 22, 1928

Comes now The United Railways and Electric Company of Baltimore, the appellant in the above entitled cause, and adopts its assignments of error as the points upon which it intends to rely in this Court in said cause.

Chas. McH. Howard, Chas. Markell, Counsel for the United Railways and Electric Company of Baltimore, Appellant.

IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1928

No. 464

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, Appellant,

vs.

HAROLD E. WEST, Chairman, and J. FRANK HARPER and STEUART PURCELL, Members, Constituting the Public Service Commission of Maryland, Appellees

Service of copy of within designation of points to be relied on admitted this 22nd day of Sept. 1928.
Raymond S. Williams, Counsel for Public Service Comm. of Md., Appellees.

[File endorsement omitted.]

IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1928

No. 465

STATEMENT OF POINTS TO BE RELIED UPON—Filed Sept. 22, 1928

Come now Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, constituting the Public Service Commission of Maryland, cross-appellants in the above entitled cause, and adopt their assignments of error as the points upon which they intend to rely in said cause.

Raymond S. Williams, Counsel for Harold E. West et al., Constituting the Public Service Comission of Maryland, Cross-appellants.

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1928

No. 465

HAROLD E. WEST, Chairman, and J. FRANK HARPER and STEUART PURCELL, Members, Constituting the Public Service Commission of Maryland, Cross-Appellees

vs.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, Cross-appellee

Service of copy of within designation of points to be relied on admitted this Twenty Second day of September, Nineteen Hundred and Twenty-Eight.

Charles McHenry Howard, Chas. Markell, Counsel for the United Railways and Electric Company of Baltimore, Cross-appellee.

[File endorsement omitted.]

Endorsed on cover: File Nos. 33,773, 33,774. Maryland Court of Appeals. Term No. 464. The United Railways and Electric Company of Baltimore, appellant, vs. Harold E. West, chairman, and J. Frank Harper and Steuart Purcell, members, constituting the Public Service Commission of Maryland. Term No. 465. Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, Constituting the Public Service Commission of Maryland, appellants, vs. The United Railways and Electric Company of Baltimore. Filed September 21st, 1928. File No. 33,773, 33,774.

1077

Record - - No. 7

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

VS.

HAROLD E. WEST ET AL., CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND.

JOSEPH C. FRANCE,

HENRY H. WATERS,

HAMAN, COOK, CHESNUT & MARKELL,

VENABLE, BAETJER & HOWARD,

For Appellant.

THOMAS J. TINGLEY,

RAYMOND S. WILLIAMS,

For Appellee.

For Prior Proceeding See Court of Appeals Record No. 52, April Term, 1928.

IN THE

Court of Appeals

OF MARYLAND.

APPEAL FROM THE CIRCUIT COURT NO. 2 OF BALTIMORE CITY.

APPEAL TO THE APRIL TERM, 1929, OF THE COURT OF APPEALS OF MARYLAND.

Filed January 29th, 1929.

Press of
THE DAILY RECORD COMPANY
[illegible] East Saratoga Street
Baltimore, Md.

1678

TRANSCRIPT OF RECORD

FROM THE

CIRCUIT COURT NO. 2 OF BALTIMORE CITY

IN THE CASE OF

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

VS.

HAROLD E. WEST, ET AL., CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND,

TO THE

COURT OF APPEALS OF MARYLAND.

For Prior Proceedings, See Court of Appeals Record No. 52, April Term, 1928.

JOSEPH C. FRANCE,
HENRY H. WATERS,
HAMAN, COOK, CHESNUT & MARKELL,
VENABLE, BAETJER & HOWARD,
For Appellant.

THOMAS J. TINGLEY,
RAYMOND S. WILLIAMS,
For Appellee.

DOCKET ENTRIES.

J. C. France
Henry H. Waters
Haman, Cook, Chesnut & Markell
Venable, Baetjer & Howard

The United Railways and Electric Company of Baltimore.

No. 16435 A

Thomas J. Tingley
Raymond S. Williams
"
"
"

Harold E. West, Chairman, and
J. Frank Harper and
Steuart Purcell, Members, constituting
The Public Service Commission of Maryland.

12th December, 1928—Supplemental Bill of Complaint and to have Order No. 12639 passed February 10, 1928, as amended by Order No. 13420 passed November 28, 1928, of the Public Service Commission of Maryland in so far as it purports to limit rates of the plaintiff so as to prevent said plaintiff from charging a flat fare of ten cents or from making similar increases in commutation and other special rates or from continuing the first and second zones on the Halethorpe line as they were extended on February 10, 1928, and any prior orders of the said Commission in so far as they purport so to limit the rates of the Company, etc., be declared unlawful, null and void, etc. (1) and plaintiff's Exhibits A (2) and B (3) fd.

12th December, 1928—Subpoena Issued (4) [Summoned as marked].

29th December, 1928—Appearance of Defendants by Thomas J. Tingley and Raymond S. Williams and its Answer to supplemental Bill of Complaint (5) fd.

10th January, 1929—Transcript of Record from Public Service Commission (6) fd.

10th January, 1929—Decree refusing Injunction as prayed in the Supplemental Bill of Complaint or otherwise, that vacating and setting aside order No. 12639

of the Public Service Commission of Md. as amended by Order No. 13420 or prior orders, etc., fix or limit the schedule of fares to be charged or otherwise refused and dismissing Supplemental Bill of Complaint with costs (7) fd.

10th January, 1929—Appeal prayed to the Court of Appeals of Maryland from decree of this Court dated January 10, 1929 (8) fd.

26th January, 1929—Stipulation (9) fd.

---

(20)

DECREE.

(Filed 31st August, 1928.)

This cause having been heard in the Court of Appeals of Maryland and the decree of this Court having been by the Court of Appeals affirmed in part and reversed in part and this cause remanded for further proceedings in accordance with the views expressed in the opinion of the Court of Appeals, it is thereupon this 31st day of August, 1928, in accordance with the views expressed in the opinion of the Court of Appeals and pursuant to the mandate of the Court of Appeals, Adjudged, Ordered and Decreed as follows:

1. That an injunction as prayed in the bill of complaint or otherwise be and it hereby is refused, the decree of this Court enjoining the defendants having been reversed by the Court of Appeals.

2. That vacation and setting aside of Order No. 12639 of the public Service Commission of Maryland and/or prior orders of said Commission, in so far as said order and/or orders fix or limit the schedule of fares to be charged by the plaintiff, as prayed in the bill of Complaint or otherwise, be and the same hereby is refused, the decree of this Court vacating and setting aside said Order No. 12639, having been reversed by the Court of Appeals.

3. That, the schedule of fares fixed by said Order No. 12639 being in part based upon an allowance for annual

depreciation arrived at by unlawful and unreasonable methods and by the use of an unlawful and unreasonable basis, viz., the basis of cost of the plaintiff's depreciable property instead of the proper basis, its present value, the proceedings before the Public Service Commission of Maryland involved in this cause be and they hereby are remanded to said Commission with directions to further consider the question of depreciation, determine the proper allowance for depreciation in accordance with opinion of the Court of Appeals and made any change in said rate schedule which may be necessary and requisite to yield to the plaintiff a fair and reasonable return (in accordance with said opinion), upon the fair value of its property.

JOSEPH N. ULMAN.

---

(1)

SUPPLEMENTAL BILL OF COMPLAINT.

(Filed 12 December, 1928.)

In the Circuit Court No. 2 of Baltimore City.

The United Railways and Electric Company of Baltimore

vs.

Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, Constituting the Public Service Commission of Maryland.

To the Honorable, the Judge of said Court:

The United Railways and Electric Company of Baltimore, a body corporate (hereinafter called the Company), brings this, its supplemental bill of complaint, against Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, members, constituting the Public Service Commission of Maryland (hereinafter called the Commission), and complaining, says:

1. The Company is a Maryland corporation and a street railroad corporation as defined in the Public Service Commission Law and owns and operates street railway property in Baltimore City and Baltimore and Howard Counties. The defendant, Harold E. West, is the chairman and the defendants, J. Frank Harper and Steuart Purcell are members of the Public Service Commission of Maryland and all constitute the Public Service Commission of Maryland.

2. Order No. 8240, passed by the Commission on May 26, 1924, fixed the Company's base rate fare at seven and one-half cents, when checks are purchased, or eight cents cash, with a four cent fare for children, school tickets at five cents and commutation tickets at special rates, and said fares were continued in effect by Order No. 10,072 passed by the Commission on March 9, 1926.

3. As is recited in the opinion of the Commission in the case hereinafter referred to, the Company "on August 1, 1927, filed with this Commission an application for an increase in the rates of fare charged by the Company from eight cents cash with two tokens for fifteen cents, to a ten cent flat rate, asserting that the existing rate of fare 'is inadequate to give a fair return on the value of your petitioner's properties devoted to the public service, and that the net income of your petitioner has constantly fallen short of the amount estimated by the Commission as necessary for good credit and satisfactory service to the public.

"The application pointed out that the revenue of the Company had been falling steadily, that taxes, wages and other items included in the cost of operation

'have increased, so that your petitioner is now confronted with an emergency which requires immediate relief, if it is to continue to perform its public service, maintain its credit and secure necessary money to provide new cars and other equipment. * * * your petitioner believes that a ten-cent fare is necessary to enable it to serve the public adequately and obtain funds necessary for the coming years to keep pace with the growing needs of the City, and obtain a fair return on the fair value of its properties.'

"The Company thereupon asked for the establishment of a flat fare of ten cents cash, half fare of five cents for children under twelve years of age, school tickets at five cents each and commutation tickets at special rates. It also asked that the Commission put into effect at once 'substantially increased fares' to meet the emergency the Company asserted it was facing by reason of its decreasing revenues, pending the establishment of permanent rates of fare.

"The application of the Company, therefore, was two fold. It asked for the establishment of an emergency rate of such amount as the Commission might regard to be sufficient, and a permanent rate of ten cents.

"The Commission first heard the application for the emergency increase, the hearings beginning on September 6, and ending September 14th. The taking of testimony occupied five days. On September 20, 1927, the Commission passed Order No. 11802 denying the application for an emergency rate of fare, on the ground that the Company had failed to show that such an emergency existed in the affairs of the Company as to warrant a temporary increase in fares [i. e., had failed to show 'that the public interest requires the establishment of substantially increased fares as temporary emergency fares'], or that such increase was 'necessary for the purpose of providing adequate and efficient service, or for the preservation of property.'

"By the same order the Commission set October 26th, as the date for beginning the hearing of the application for the permanent increase in the fare rate, the date later being changed to October 27th. The taking of testimony in this hearing occupied eleven days and three additional days were devoted to argument of counsel. The case was finally submitted on December 10, 1927."

4. As is also recited in the opinion of the Commission in the case aforesaid, "the communities and citizens of Halethorpe, Arbutus and Leeds," in Baltimore County, intervening by counsel, "alleged discrimination against the communities mentioned because the length of the ride to the center of the City, for which they are charged two fares, is less than car riders of other com-

munities receive for one fare," and asked that said communities be given a single fare instead of two fares.

5. On February 10, 1928, the Commission in the case aforesaid filed an opinion and passed Order No. 12639 (of which the opinion was made part), by which, among other things, (1) the application of the Company for the establishment of a flat fare of ten cents was denied, (2) the Company from and after midnight of February 12, 1928, and until further order of the Commission, was permitted to charge a base rate fare of eight and one-third cents when checks are purchased or nine cents cash, and five cents for children, (3) the first fare zone on the Halethorpe line was extended to the terminal at Halethorpe and (4) all other fares were continued. A copy of said opinion and order marked "Plaintiff's Exhibit A" filed herein with the original bill is hereby made a part hereof.

6. In its opinion aforesaid the Commission found, among other things, that the annual return that can reasonably be expected by the Company from the rates fixed by the order last mentioned is $4,691,606, which amount was determined on the basis of an annual allowance of only $883,544 for depreciation and retirement of property. On May 11, 1928, by the decree of this Honorable Court herein, the aforesaid Order No. 12639 was vacated and set aside in so far as the same purports to limit the Company's rates (except that as to the provision in said order extending the first fare zone on the Halethorpe line to the terminus at Halethorpe the original bill was dismissed) and enforcement of said order or any prior orders of the Commission purporting to limit the Company's rates was enjoined. On July 16, 1928, said decree of this Honorable Court was by the Court of Appeals affirmed in part and reversed in part and this cause was remanded for further proceedings in accordance with the views expressed in the opinion of the Court of Appeals. On August 31, 1928, by decree of this Honorable Court in accordance with the opinion and pursuant to the mandate of the Court of Appeals an injunction and vacation and setting aside of Order No. 12639 and prior orders of the Commission in so far as they fix or limit the Company's fares, as prayed in the original bill or otherwise, was refused, but the schedule of fares

fixed by said Order No. 12639 being in part based upon an allowance for annual depreciation (viz., the aforesaid allowance of $883,544) arrived at by unlawful and unreasonable methods and by the use of an unlawful and unreasonable basis, viz., the basis of cost of the Company's depreciable property instead of the proper basis, its present value, the proceedings before the Commission involved in this cause were remanded to the Commission with directions to further consider the question of depreciation, determine the proper allowance for depreciation in accordance with the opinion of the Court of Appeals and make any changes in said rate schedule which may be necessary and requisite to yield to the Company a fair and reasonable return (in accordance with said opinion) upon the fair value of its property.

7. Thereafter (as is recited in the opinion of the Commission hereinafter referred to) in obedience to the decree of this Honorable Court, in accordance with the opinion of the Court of Appeals, the Commission on November 19, 1928, entered upon a rehearing of the aforesaid proceedings in so far as they concerned the annual allowance for depreciation made in Order No. 12639 and the accompanying opinion filed February 10, 1928, heard additional evidence consisting of testimony of H. Carl Walf, Chief Engineer of the Commission, and Charles Nodder, Chief Auditor of the Commission, and on November 28, 1928, filed an opinion and passed Order No. 13420 (of which the opinion was made part) by which opinion the Commission found that $1,638,660 (instead of $883,544) is the proper annual amount to be allowed for depreciation, and that this allowance (being an increase of $755,116 over the previous allowance) "necessitates an increase in the rate of fare from nine cents cash or three tokens for twenty-five cents to ten cents cash or four tokens for thirty-five cents," other fares to remain as established by Order No. 12639, and by said Order No. 13420 Order No. 12639 was amended so that from and after midnight of November 30, 1928, and until the further order of the Commission the Company was permitted to charge a base rate fare of eight and three-quarter cents when checks are purchased or ten cents cash (instead of eight and one-third cents when checks are purchased or nine cents cash), and as to all

other fares Order No. 12639 was reaffirmed. As the Commission thus found, all the evidence before the Commission showed, and the fact is, said increase in rate permitted by Order No. 13430 is not more than is required to increase the Company's annual return by $755,116, viz., the amount of the increase in annual allowance for depreciation, and the increased rates permitted by Order No. 12639, as so amended by Order No. 13420, will yield the Company an annual return not more in any event than $4,691,606, the amount which the Commission in its opinion filed February 10, 1928, found could reasonably be expected from the rates fixed by Order No. 12639. A copy of said opinion and said Order No. 13420 is filed herewith as part hereof, marked "Plaintiff's Exhibit B."

8. In its aforesaid opinion filed February 10, 1928 (as modified by its aforesaid opinion filed November 28, 1928), the Commission found that the present fair value of the Company's property used in the public service is $75,000,000, and that the annual return that can reasonably be expected by the Company from the rates fixed by Order No. 12639, as amended by Order No. 13420, is $4,691,606, and amounts to a return of 6.26 per cent. on the fair value of the Company's property. The overwhelming weight of the evidence before the Commission showed there was no substantial evidence to the contrary and the fact is that the fair value of the company's said property is not less than $75,000,000, the annual return that can be expected by the Company from said rates (as increased by Order No. 13420) is not more than $4,691,606, and not more than 6.26 per cent. on the fair value of the Company's property, and an annual return of $4,691,606 or of 6.26 per cent. would be substantially less than a fair return such as the Company is entitled under the Constitution of the United States, and also under the Maryland Bill of Rights and the Public Service Commission Law, to be permitted to earn. Said Order No. 12639, as so amended by Order No. 13420, of the Commission, therefore, and any prior orders of the Commission limiting the Company to the same or lower rates, are contrary to the Fourteenth Amendment of the Constitution of the United States and to the Maryland Bill of Rights and the Public Service Commission Law and are null and void, and, so long as they are enforced, de-

prive the Company of its property without due process of law, and said orders and the rates, regulations, practices, acts and services fixed thereby are unlawful and unreasonable.

9. In each and all of the following respects Order No. 12639, (as amended by Order No. 13420), of the Commission, and the Commission's opinion made a part of Order No. 12639, (as modified by the opinion made a part of Order No. 13420), and any prior orders of the Commission limiting the Company to the same or lower rates, and the rates, regulations, practices, acts and services fixed by said orders or any of them, are unlawful, unreasonable, arbitrary, unsupported by any substantial evidence, contrary to the facts established by substantial evidence, confiscatory and contrary to the Fourteenth Amendment of the Constitution of the United States and to the Maryland Bill of Rights and the Public Service Commission Law and null and void, and so long as they are enforced deprive the Company of its property without due process of law:

(a) The maximum rates of fare which by said orders the Company is now permitted to charge and collect are grossly inadequate to provide for the necessary expenses of its public service and for the consumption of its property employed in such service and to yield a fair return upon the fair value of its property so employed.

(b) The percentage which the Commission found would be the rate of return upon the fair value of the Company's property yielded by the fares established by said order, as so amended, was adopted by the Commission as a fair rate of return solely for reasons and upon considerations that have no true relation to the fairness of a return and is a grossly inadequate rate of return to compensate the Company for the use of its property in the public service without confiscation of its property.

(c) The Commission by said order burdened the Company with a substantial loss of revenue by requiring it to abolish the second fare upon its Halethorpe line, which loss, without any compensating offset, and without any lawful reason for abolition of said fare, further diminishes the inadequate return upon the Company's property.

10. That the action of the Commission in so refusing to allow the Company to charge and collect for its service the rates of fare proposed and required by it, limiting it to the rates specified and provided in said opinion and said order of February 10, 1928, as modified and amended by said opinion and said order of November 28, 1928, and abolishing its second fare on its Halethorpe line is therefore not only unreasonable but confiscatory, unlawful and void, and constitutes a taking of the Company's property without adequate compensation and without due process of law, and will, unless the Commission be enjoined and prohibited by this Honorable Court from enforcing said order or any prior order purporting to prescribe any lower rate, result in irreparable injury and damage to the Company.

11. In view of the fact that the Company is suffering daily confiscation of its property by the operation of the Commission's orders, the Company will suffer immediate and irreparable loss and damage unless the operation and effect of said orders are immediately enjoined or restrained or suspended or stayed by this Honorable Court by a preliminary injunction or a restraining order.

To the end, therefore:

1. That the aforesaid Order No. 12639, passed February 10, 1928, as amended by the aforesaid Order No. 13420, passed November 28, 1928, of the Public Service Commission of Maryland, the defendants herein, in so far as it purports to limit the rates of The United Railways and Electric Company of Baltimore, the plaintiff herein, so as to prevent the plaintiff from charging a flat fare of ten cents or from making similar increases in comutation and other special rates or from continuing the first and second fare zones on the Halethorpe line as they existed on February 10, 1928, and any prior orders of the Commission in so far as they purport so to limit the rates of the Company, and the rates, regulations, practices, acts and services fixed by said orders or any of them in so far as they purport to limit the Company as aforesaid, be adjudged and decreed to be unlawful, unreasonable, unconstitutional, null and void and be vacated and set aside.

2. That the defendants, Harold E. West, Chairman,

and J. Frank Harper and Steuart Purcell, members, constituting the Public Service Commission of Maryland, and their respective successors in office, agents and attorneys, and all persons acting under their authority may be perpetually and also preliminarily pending this suit, restrained and enjoined from enforcing or continuing in force against the plaintiff the aforesaid Order No. 12639 (as amended by the aforesaid Order No. 13420) in so far as it purports to limit the rates of the plaintiff so as to prevent the plaintiff from charging a flat rate of ten cents or from making similar increases in commutation and other special rates or from continuing the first and second fare zones on the Halethorpe line as they existed on February 10, 1928, or any prior orders of the Commission in so far as they purport so to limit the rates of the Company.

3. And that the plaintiff may have such other and further relief in the premises as its case may reuqire.

May it please your Honor to grant unto the plaintiff the writ of subpoena directed to the defendants, Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, members, constituting the Public Service Commission of Maryland, and each of them, commanding them and each of them to be and appear in this Honorable Court on some certain day to be named therein to answer the premises and abide by and perform such order or decree as this Honorable Court may make in the premises.

And as in duty bound, your orator will ever pray.

J. C. FRANCE,

HENRY H. WATERS,

HAMAN, COOK, CHESNUT & MARKELL,

VENABLE, BAETJER & HOWARD,

Solicitors for Plaintiff, The United Railways and Electric Company of Baltimore.

State of Maryland, City of Baltimore, ss:

I hereby certify, that on this 12th day of December, 1928, before me, the subscriber, a notary public of the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared Charles D. Emmons and made oath in due form of law as follows:

"I am the President of The United Railways and Electric Company of Baltimore, the plaintiff in the aforegoing supplemental bill of complaint. I am authorized to make this affidavit on behalf of The United Railways and Electric Company of Baltimore. I have read the aforegoing supplemental bill. I have personal knowledge of the matters and facts stated in the aforegoing supplemental bill. The matters and facts stated in the aforegoing supplemental bill are true to the best of my knowledge and belief."

CHARLES D. EMMONS.

Subscribed and sworn to before me this day of December, 1928.

As Witness my hand and notarial seal.

CHRISTOPHER E. RIELLY,

(Seal.) Notary Public.

NOTE.—

PLAINTIFF'S EXHIBIT A

Is Case No. 2648, Entitled

In the Matter of the

Application of The United Railways and Electric Company of Baltimore for the Establishment of a Permanent Rate of Fare of 10 Cents and for the Establishment of a Temporary Emergency Rate of Fare Pending the Establishment of Such Permanent Rate of Fare.

Said Exhibit printed in full in the April Term, 1928, Record Number 52, of the Court of Appeals of Maryland.

(3)

"PLAINTIFF'S EXHIBIT B."

(Filed 12 December, 1928.)

PUBLIC SERVICE COMMISSION OF MARYLAND.

In the Matter of the Application of The United Railways and Electric Company of Baltimore for the Establishment of a Permanent Rate of Fare of 10 Cents and for the Establishment of a Temporary Emergency Rate of Fare Pending the Establishment of Such Permanent Rate of Fare.

Case No. 2648

Before the Public Service Commission of Maryland.

Supplemental Opinion and Order No. 13420.

Filed November 28th, 1928.

PUBLIC SERVICE COMMISSION OF MARYLAND.

SUPPLEMENTAL OPINION

(Filed November 28th, 1928.)

Before the Public Service Commission of Maryland.

Case No. 2648.

In the Matter of The Application of The United Railways and Electric Company of Baltimore for the Establishment of a Permanent Rate of Fare of 10 Cents and for the Establishment of a Temporary Emergency Rate of Fare Pending the Establishment of Such Permanent Rate of Fare.

By the Commission:

In obedience to the mandate of Circuit Court No. 2 of Baltimore City entered August 31, 1928, in accordance with an opinion of the Court of Appeals, in the case of Harold E. West, et al., versus The United Railways and Electric Company of Baltimore, filed July 16, 1928, this Commission on Monday, November 19, 1928, entered upon a rehearing of Case No. 2648, in so far as it concerned the annual allowance for depreciation on the property of The United Railways and Electric Company of Baltimore made in the opinion and Order No. 12639 of the Commission, filed February 10, 1928.

The order of Circuit Court No. 2 of Baltimore City directed the Commission to further consider the question of depreciation, determine the proper allowance for depreciation in accordance with the opinion of the Court of Appeals, and make any change in the rate schedule which may be necessary and requisite.

In its opinion and Order No. 12639, this Commission allowed five per cent. of gross revenue as a proper amount to be set aside for depreciation upon the Company's depreciable property. The amount so estimated for the year 1928 was $883,544. This allowance of five per cent. of the Company's gross annual revenues was made first in 1912, the year in which a depreciation reserve was set up by the Company, and it has continued since. It has provided for current retirements of the Company's property at cost, and permitted the building up of a reserve, at the beginning of the year 1928, of $1,413,739. The plan of providing for retirements at cost is that followed by the Interstate Commerce Commission and the utility regulatory commissions of most of the states, and by all other utilities under the jurisdiction of this Commission.

The Commission, therefore, did not feel justified, in the circumstances, in departing from the generally observed rule of allowing depreciation on a basis of cost.

The Company's contention that value, and not cost, is the proper basis upon which to calculate depreciation was sustained both by Circuit Court No. 2 of Baltimore City and by the Court of Appeals.

In its opinion the Court of Appeals asserted that while there is authority for calculating depreciation on the basis of cost, "in our opinion it is artificial, illogical and unsound, and ought not to be approved." The Court continues:

"Since we cannot say that proper methods would not have produced a result which would have affected the rate schedule adopted, the case should be remanded to the Commission in order that it may consider and determine the proper allowance for depreciation in accordance with rules hereinafter stated, and if necessary readjust the rate schedule to cover any changes it may make in that allowance."

Later the Court declares:

"In such a case as this we are * * * dealing * * * with substantive rights protected by constitutional guaranties, and there seems to be no logical reason why the depreciation should not be based upon the actual value of the property itself, rather than upon vague and conjectural inferences drawn from the money the property earns. * * * But even so, if the conclusion actually reached was proper, the fact that it was reached by improper methods, would not justify us in disturbing it, so that the more important question is whether the base of the calculations by which it was tested was itself lawful. And that depends upon whether the Commission should have based its allowance for depreciation upon the original cost of the property, or upon its present value. It actually did use cost and not present value as the basis of its conclusion, and here again it must be said that there is authority for its procedure. But in our opinion it is justified by neither law nor right reason."

The Court directed the Commission to make a physical inspection of the property and an investigation of the probable useful life of the property as shown by the experience of this Company and other companies using similar properties in a similar way and to make an estimate, based in part at least upon such an investigation of the probable annual depreciation. This the Commission has done.

The annual amount claimed by the Company for depre-

ciation was $2,200,000. This, however, in the opinion of the Commission, provided for certain extraordinary obsolescence, which the Court of Appeals declares the Commission does not have to allow, and which it does not allow. H. Carl Wolf, Chief Engineer of the Commission, under whose direction the Commission's investigation and physical inspection of the property were made, testified that the fair amount to be allowed for depreciation, based upon the fair value of the property, is $1,687,068. Charles Nodder, Chief Auditor of the Commission, approaching the problem from another angle, that revealed by the experience of the Company as shown by its books, testified that the amount required for depreciation, based on present fair value, is $1,269,565.25.

The Commission carefully has considered all the testimony and exhibits before it in this case bearing upon the problem of depreciation, and finds that $1,638,660 is the proper amount to be allowed the Company for depreciation. This allowance is based upon the present value of the Company's depreciable property, in accordance with the Court's order, and equates to 3.6 per cent. of the amount testified to as being the value of the Company's depreciable property, $45,518.344.

In determining this allowance it is assumed that the existing practice with respect to the division between charges for maintenance and charges to the depreciation reserve will be continued.

The Commission will require that there be filed with it annually a complete report showing in such detail as it may prescribe the actual accruals to and charges against the reserve as fixed upon the basis herein provided, as well as the investment or other disposition of the funds represented by the balance in the reserve. These reports will enable the Commission to keep informed as to the status of this reserve and to take such action as may be required in the public interest in the ascertainment of the point at which the accumulations in the depreciation reserve shall be sufficient to permit the limiting of future accretions thereto to the amount of the net retirements, and the manner in which the balance in the reserve and/or interest thereon shall be used in the determination of rates of fare, counsel for the Company having

conceded the authority of the Commission in these matters.

The allowance of $1,638,660 is an increase of $755,116 over the allowance previously found, which was based upon the cost of the Company's property, and necessitates an increase in the rate of fare from 9 cents cash or three tokens for 25 cents to 10 cents cash or four tokens for 35 cents. Other fares will remain as established by Order No. 12639.

The Commission will pass an order in accordance with the findings herein stated.

ORDER NO. 13420.

Before the Public Service Commission of Maryland.

Case No. 2648.

In the Matter of the Application of the United Railways and Electric Company of Baltimore for the Establishment of a Permanent Rate of Fare of 10 Cents and for the Establishment of a Temporary Emergency Rate of Fare Pending the Establishment of Such Permanent Rate of Fare.

In accordance with the opinion of the Commission filed herein on the date hereof, which said opinion is hereby referred to and made a part hereof,

It is, this 28th day of November, in the year Nineteen Hundred and Twenty-eight, by the Public Service Commission of Maryland,

Ordered, That paragraphs (2) and (4) of Order No. 12639 entered herein by the Commission on February 10th, 1928, be and they hereby are modified and amended to read as follows:

(2) That from and after midnight of November 30th,

1928, and until the further order of the Commission, The United Railways and Electric Company of Baltimore shall be permitted to charge and collect for the transportation of persons over its several street railway lines in Baltimore City and vicinity, a base rate fare of eight and three-quarter cents when tickets or fare checks are purchased, or ten cents cash, for the conveyance of each passenger over twelve years of age, and five cents for each child between the ages of four and twelve years, between any of the points designated in the schedule of the said Company filed with the Commission pursuant to the requirements of the Commission's Order No. 8240 entered in Case No. 1682 on May 26th, 1924, or between intermediate points, in either direction, on any of such lines, except in so far as the zones of any of the said lines are hereinafter modified or changed.

(4) That during the period this Order is in effect The United Railways and Electric Company of Baltimore shall sell on its cars and at its offices and waiting rooms tickets or fare checks which shall be honored for passage on its cars, at the rate of eight and three-quarter cents each, which said tickets or fare checks shall be sold on the cars in quantities of four (or more, in the option of the company), and should the conductor of a car at any time be unable for any reason to sell a passenger desiring to purchase them at least four tickets or fare checks, then such passenger shall be required to pay but eight cents fare.

And it is further ordered: That in addition to the monthly reports required by the aforesaid Order No. 12639 of the Commission to be filed by the said The United Railways and Electric Company of Baltimore, the said Company shall furnish to this Commission annually accurate and complete statements under oath, showing in such detail as may be required by the Commission the actual accruals to and charges against the depreciation reserve as fixed upon the basis provided by the aforesaid opinion filed herewith, as well as the investment or other disposition of the funds represented by the balance in the said reserve, which statements shall be filed so soon as may be reasonably practicable and convenient after the end of each calendar year.

And it is further ordered: That except as hereinbefore modified, Order No. 12639 entered herein by the the Commission on February 10th, 1928, shall be and remain in full force and effect.

And it is further ordered: That this Order shall be effective from and after midnight of November 30th, 1928, and until the further order of the Commission.

And it is further ordered: That a copy of this order and a copy of the opinion hereinbefore referred to and filed herewith be forthwith served upon the said The United Railways and Electric Company of Baltimore, and that the said Company, within ten days from the date of the service of such copy, advise this Commission in writing whether or not it will accept and abide by the same.

HAROLD E. WEST,
J. FRANK HARPER,
STEUART PURCELL,
Commissioners.

State of Maryland, Office of the Public Service Commission, ss:

The preceding copy has been compared with the original Supplemental Opinion and Order No. 13420—In the matter of the application of The United Railways and Electric Company of Baltimore for the establishment of a permanent rate of fare, etc.,—Case No. 2648, on file in this office and I do Hereby Certify the same to be a correct transcript therefrom and of the whole thereof.

Witness, my hand and the Seal of Office of the Public Service Commission, at the City of Baltimore, this 11th day of January, one thousand nine hundred and twenty-nine.

(Seal.)

FRANK HARPER,
Secretary.

(5)

ANSWER TO SUPPLEMENTAL BILL OF COMPLAINT.

(Filed 29th December, 1928.)

ANSWER OF THE PUBLIC SERVICE COMMISSION OF MARYLAND.

To the Honorable, the Judge of said Court:

The answer of Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, constituting the Public Service Commission of Maryland (hereinafter referred to as the Commission), to the Supplemental Bill of Complaint of the United Railways and Electric Company of Baltimore (hereinafter referred to as the Company), filed against said Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, constituting the Public Service Commission of Maryland, respectfully shows:

(1) The allegations of paragraph 1 of the Supplemental Bill are admitted.

(2) The allegations of paragraph 2 of the Supplemental Bill are admitted.

(3) The allegations of paragraph 3 of the Supplemental Bill are admitted.

(4) The allegations of paragraph 4 of the Supplemental Bill are admitted.

(5) The allegations of paragraph 5 of the Supplemental Bill are admitted.

(6) The allegations of paragraph 6 of the Supplemental Bill are admitted.

(7) Answering the 7th paragraph of said Supplemental Bill, the Commission says: That pursuant to the opinion of the Court of Appeals, rendered in these proceedings, the Commission, on November 19th, 1928, entered upon a rehearing of the proceedings theretofore held in this case in so far as they concerned the annual allowance for depreciation made in Order No. 12639 and the accompanying Opinion filed February 10th, 1928.

That prior to such proceedings, the Engineering and Accounting Departments of the Commission had made an intensive and thorough investigation and study of the property and records of the Company, with a view to determining the proper amount which should be allowed annually for depreciation of the Company's property, in accordance with the opinion of the Court of Appeals of Maryland in this case. That the proceedings held by the Commission with reference to the matter of depreciation were thorough, consisting of the hearing and consideration of testimony and exhibits offered by the Chief Engineer and Chief Auditor of the Commission, the Company offering no further evidence with respect to the matter in addition to that theretofore submitted. That on November 28th, 1928, the Commission filed an opinion and passed Order No. 13420 (of which the opinion was made part), by which opinion it found that $1,638,660, (instead of $883,544 previously allowed) is the proper annual amount to be allowed for depreciation, to conform with the opinion of the Court of Appeals of Maryland, and increased the Company's rate of fare to ten cents cash, or four tokens for thirty-five cents, other fares to remain as established by Order No. 12639. That the increase in fare so allowed by the Commission was intended to furnish only sufficient revenues to supply the increase made in the annual depreciation allowance of the Company.

(8) It is admitted that the Commission found (1) that the present fair value of the Company's property used in the public service is $75,000,000; (2) that the annual return which the Commission estimated would be yielded by the rates fixed in Order No. 12639 was $4,691,606; and that the same would amount to a return of 6.26 per cent. on the fair value of the Company's property. The remaining allegations of the 8th paragraph of the Supplemental Bill are denied.

(9) Answering the allegations of the 9th paragraph of the Supplemental Bill, the Commission denies the same, and further answering the allegations of said paragraph, the Commission specifically avers:

(a) That the maximum rates of fare which, by the Orders herein referred to, the Company is permitted to

charge and collect, are adequate to provide for the necessary expenses of its public service and for the consumption of its property employed in such service, and are adequate to yield a fair return upon the fair value of its property so employed, and are all that the services now rendered by the Company to the public is reasonably worth.

(b) That the percentage which the Commission estimated would be the rate of return on the fair value of the Company's property, yielded by the fares established by said Order, as so amended, was adopted by the Commission upon considerations bearing a true relation to the fairness of a return under the facts and circumstances, and is an adequate rate of return to compensate the Company for the use of its property in the public service.

(c) That the Commission lawfully and properly required the Company to abolish the second fare upon its Halethorpe Line.

And further answering the allegations of the said paragraph, the Commission avers that the decline in the number of passengers carried by the Company, and in the revenue received by it, under the fares fixed by the said Order as so amended, has been so marked as to indicate that the rates of fare therein fixed by the Commission have reached the full value of the service rendered by the Company to the public. That the average monthly rate of decline in the number of revenue passengers carried by the Company during the year 1927, when its application was pending before the Commission, below that carried in 1926, was less than 3 per cent. That under the fares fixed by the Commission in Order No. 12,639, the average monthly rate of decline in revenue passengers carried has been 9 per cent. during 1928 below those carried in 1927, or 12 per cent. below those carried in 1926, the accelerated decline being coincident with the increase in fare. The attendant increase in revenue was only .80 per cent. That, by reason of such decline in patronage, the Company's passenger revenue was increased less than one hundred thousand dollars ($100,000), during the first nine full months of operation under the fare of nine cents cash, with three tokens for twenty-five cents,

which was five-sixths of a cent higher than that obtaining when the Company filed its application in this case. That the rate of decline in revenue passengers has been even more marked under the higher fares fixed by Order No. 13,420, pursuant to the opinion and decree of the Court of Appeals, than under those fixed by Order No. 12,639. That the rates of fare fixed by the said Order No. 13,420 are among the highest charged in the United States for urban street railway transportation; and that the adverse effect of the said rates, and of those fixed by Order No. 12,639, upon the number of passengers and amount of revenue of the Company, has been so marked as to indicate that the said rates are at least equal to the present value of the service rendered by the Company to the public.

(10) The Commission denies the allegations of the 10th paragraph of the Supplemental Bill.

(11) The Commission denies the allegations of the 11th paragraph of the Supplemental Bill.

Wherefore, having fully answered said Supplemental Bill of Complaint, these respondents pray that the Supplemental Bill may be dismissed with costs.

(Signed) THOMAS J. TINGLEY,

(Signed) RAYMOND S. WILLIAMS,

Special Counsel to the Public Service Commission of Maryland.

(Signed) HAROLD E. WEST,

Chairman of the Public Service Commission of Maryland.

State of Maryland, City of Baltimore, to wit:

I hereby certify that on this 29th day of December, 1928, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared Harold E. West, Chairman of the Public Service Commission of Maryland, and made oath in due form of law that the matters and facts set

forth in the foregoing Answer are true, to the best of his knowledge, information and belief.

Witness my hand and Notarial Seal.

(Signed) EVELYN M. WYNIGER,
Notary Public.

My Commission expires May 2, 1929.

TRANSCRIPT OF PAPERS AND PROCEEDINGS BEFORE THE PUBLIC SERVICE COMMISSION FILED IN THIS COURT ON JANUARY 10, 1929, AND WITH THE COMMISSION ON SEPTEMBER 1, 1928, AND SEPTEMBER 6, 1928.

(Filed 10th January, 1929.)

Before The Public Service Commission of Maryland.

Case No. 2648.

In the Matter of the Application of The United Railways and Electric Company of Baltimore for the Establishment of a Permanent Rate of Fare of Ten Cents and for the Establishment of a Temporary Emergency Rate of Fare Pending the Establishment of Such Permanent Rate of Fare.

To the Honorable, The Public Service Commission of Maryland:

The United Railways and Electric Company of Baltimore, the petitioner in the above entitled case, respectfully shows unto your Honorable Commission:

1. By the decree of the Circuit Court No. 2 of Baltimore City entered pursuant to the mandate of the Court

of Appeals on August 31, 1928, in the cause in said Court entitled The United Railways and Electric Company of Baltimore vs. Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, constituting the Public Service Commission of Maryland, it was adjudged, ordered and decreed that, the schedule of fares fixed by Order No. 12639 of this Commission herein being in part based upon an allowance for annual depreciation arrived at by unlawful and unreasonable methods and by the use of an unlawful and unreasonable basis, viz., the basis of cost of your petitioner's depreciable property instead of the proper basis, its present value, the proceedings herein before this Commission involved in said cause were remanded to the Commission with directions to further consider the question of depreciation, determine the proper allowance for depreciation in accordance with the opinion of the Court of Appeals and make any changes in said rate schedule which may be necessary and requisite to yield to your petitioner a fair and reasonable return (in accordance with said opinion) upon the fair value of its property.

2. The Court of Appeals has determined and adjudged that it was confiscatory and contrary to the provisions of the Constitution of the United States (as well as unlawful, unreasonable, artificial, illogical and unsound) for this Company to base the annual allowance to your petitioner for depreciation on cost, as the Commission did by said Order No. 12639 herein, instead of upon the present value, of its depreciable property. Your petitioner therefore is and long has been suffering daily confiscation of its property, which confiscation has already continued more than a year since your petitioner's application for relief herein.

Wherefore your petitioner prays that this Honorable Commission forthwith perform said decree of the Circuit Court No. 2 of Baltimore City by further considering the question of depreciation, determining the proper allowance for depreciation in accordance with the opinion of the Court of Appeals and making such changes in said rate schedule as may be necessary and requisite, by reason of said determination of the proper allowance for de-

preciation, to yield to your petitioner a fair and reasonable return (in accordance with said opinion) upon the fair value of its property, and that your petitioner be given notice of and opportunity to appear at the taking of additional testimony, if any, in so performing said decree.

Respectfully submitted,

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE,

By C. D. EMMONS, (Signed)
President.

(Signed)
J. C. FRANCE,
VENABLE, BAETJER & HOWARD,
HAMAN, COOK, CHESNUT & MARKELL,
HENRY H. WATERS,
Attorneys for Petitioner.

State of Maryland, City of Baltimore, ss:

I hereby certify that on this 1st day of September, 1928, before me, the subscriber, a notary public of the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared Charles D. Emmons, President of The United Railways and Electric Company of Baltimore, and made oath in due form of law that the matters and facts set forth in the aforegoing petition are true as stated to the best of his knowledge, information and belief.

As Witness my hand and notarial seal.

(Signed) W. FRANK REED,
Notary Public.

(Seal.)

ORDER NO 13168.

Before The Public Service Commission of Maryland.

Case No. 2648.

In the Matter of the Application of The United Railways and Electric Company of Baltimore for the Establishment of a Permanent Rate of Fare of Ten Cents and for the Establishment of a Temporary Emergency Rate of Fare Pending the Establishment of Such Permanent Rate of Fare.

The Circuit Court No. 2 of Baltimore City, by its order entered on August 31st, 1928, in the case of The United Railways and Electric Company of Baltimore vs. Harold E. West et al., having remanded this case to the Public Service Commission of Maryland with directions to further consider the question of depreciation, determine the proper allowance for depreciation in accordance with the opinion of the Court of Appeals and make any changes in the rate schedule which may be necessary and requisite, it is, this 6th day of September, 1928, by the Public Service Commission of Maryland,

Ordered, That the same be, and it is hereby, set for further hearing at the office of the Commission, Baltimore, Maryland, on Thursday, November 15th, 1928, at 10:00 o'clock A. M.

(7)

DECREE.

(Filed 10th January, 1929.)

This cause having been set down for hearing and coming on to be heard on the pleadings and the transcript of papers and proceedings, including evidence, in the case before the Public Service Commission and counsel for

the parties having been heard and the Court being of the opinion, in accordance with the views expressed in the opinion of the Court of Appeals and pursuant to the mandate of the Court of Appeals, that the rates fixed by Order No. 12,639 of the Public Service Commission passed on February 10th, 1928, as amended by Order No. 13,420 passed on November 28, 1928, and said orders are not unconstitutional, unlawful or unreasonable, and do not fail to allow to the plaintiff a fair return on the fair value of its property.

It is thereupon this 10th day of January, nineteen hundred and twenty-nine, by the Circuit Court No. 2 of Baltimore City, Adjudged, Ordered and Decreed that an injunction, as prayed in the supplemental bill of complaint or otherwise, be and it hereby is refused, that vacation and setting aside of Order No. 12,639 of the Public Service Commission of Maryland, as amended by Order No. 13,420, and/or prior orders of said Commission in so far as said order and/or orders fix or limit the schedule of fares to be charged by the plaintiff, as prayed in the supplemental bill of complaint or otherwise, be and the same hereby is refused and that the supplemental bill of the plaintiff be and it hereby is dismissed with costs.

JOSEPH N. ULMAN.

---

(8)

Mr. Clerk:

Please enter an appeal by the plaintiff to the Court of Appeals from the decree entered in the above entitled case on the 10th day of January, 1929.

JOS. C. FRANCE,

HENRY H. WATERS,

HAMAN, COOK, CHESNUT & MARKELL,

VENABLE, BAETJER & HOWARD,

Solicitors for The United Railways and Electric Company of Baltimore, Plaintiff.

(9)

STIPULATION.

(Filed 26th January, 1929.)

Mr. Clerk:

In making up the transcript of the record on appeal please proceed as follows:

Include:

1. Docket Entries subsequent to First Appeal.

2. Decree entered August 31st, 1928, pursuant to Decree of the Court of Appeals.

3. Supplemental Bill of Complaint.

4. Plaintiff's Exhibit B filed with the Supplemental Bill of Complaint.

5. Answer to Supplemental Bill of Complaint.

6. Final Decree.

7. Order for Appeal.

8. In the transcript of papers and proceedings, including evidence, in the case before the Public Service Commission, (a) the Petition of The United Railways and Electric Company of Baltimore filed September 1st, 1928, and (b) the Order of the Commission dated September 6th, 1928.

9. This request as to making up the transcript of the record.

Omit:

1. All proceedings in this Court prior to the First Appeal.

2. In the transcript of papers and proceedings, including evidence, in the case before the Public Service Commission,

(a) All papers proceedings, including evidence, on or prior to February 10th, 1928, said papers and proceedings being sufficiently included in the record in this cause in the Court of Appeals on the first appeal.

(b) All formal matters such as order postponing hearing from November 15th to November 19th, admissions of service and other letters and replies not offered in evidence.

(c) All evidence subsequent to February 10th, 1928, it being hereby admitted that the only additional evidence offered before the Commission subsequently to February 10th, 1928, was the testimony and exhibits offered by the Chief Engineer and Chief Auditor of the Commission concerning the annual allowance for depreciation, viz., the testimony and exhibits referred to in the Commission's opinion filed November 28th, 1928, in paragraph 7 of the supplemental bill and in paragraph (7) of the answer to the supplemental bill, and that in this cause, whether in this Court or any higher Court of Appeal, the plaintiff does not and can not dispute the Commission's position that said omitted evidence includes substantial evidence tending to support all the statements in paragraph (7) of the answer to the supplemental bill and all the statements in the nature of findings of fact on the subject of depreciation allowance in the Commission's opinion filed November 28th, 1928, and to this extent tending to rebut the plaintiff's evidence in support of a larger depreciation allowance in the record on the former appeal.

(d) The Commission's opinion and order filed as Exhibit B with Supplemental Bill.

JOSEPH C. FRANCE,

HENRY H. WATERS,

HAMAN, COOK, CHESNUT & MARKELL,

VENABLE, BAETJER & HOWARD,

Solicitors for The United Railways and Electric Company of Baltimore, Plaintiff and Appellant.

RAYMOND S. WILLIAMS,

THOMAS J. TINGLEY,

Solicitors for The Public Service Commission, Defendants and Appellees.

Which said appeal being by the Court here also granted, it is thereupon ordered by the Court here that transcript of the record of proceedings in the case aforesaid be transmitted to the Court of Appeals of the State of Maryland under the rules thereof, and the same is transmitted accordingly.

Test: JOHN PLEASANTS,
Clerk of the Circuit Court No. 2
of Baltimore City.

In Testimony Whereof, that the aforegoing is a full and true transcript of the aforegoing papers taken from the Record of Proceedings in the Circuit Court No. 2 of Baltimore City in the cause therein mentioned.

I hereto set my hand and affix the seal of the said Circuit Court No. 2 of Baltimore City on the 29th day of January, in the year of our Lord, nineteen hundred and twenty-nine.

(Seal.)

Test: JOHN PLEASANTS,
Clerk of the Circuit Court No. 2
of Baltimore City.

IN COURT OF APPEALS OF MARYLAND, OCTOBER TERM, 1929

No. 71

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

vs.

HAROLD E. WEST et al., Constituting the Public Service Commission of Maryland

Appeal from the Circuit Court No. 2 of Baltimore City. Filed January 29, 1929. Advanced from April Term, 1929; was No. 7 of that Term

DOCKET ENTRIES

March 20th, 1929, Decree affirmed with costs.
Opinion filed. Op., Offutt, J., to be reported.
Parke, J., dissents.
Bond, C. J.: While still holding the views expressed in the dissenting opinions filed on the former appeal in this litigation, I take the questions to be closed in this Court by the previous decision.

Bill of costs omitted in printing.

STATE OF MARYLAND, sct:

I, James A. Young, Clerk of the Court of Appeals of Maryland, do hereby certify that the foregoing is truly taken from the record and proceedings of the said Court of Appeals.

In testimony whereof I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals this twenty-third day of March, A. D. 1929.

James A. Young, Clerk of the Court of Appeals of Maryland. (Seal Court of Appeals, Maryland.)

IN COURT OF APPEALS OF MARYLAND, JANUARY TERM, 1929

No. 71

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

vs.

HAROLD E. WEST et al., Constituting the Public Service Commission of Maryland

Judge OFFUTT delivered the Opinion of the Court.
Judge PARKE dissents.

OPINION—Filed March 20, 1929

The most important question presented by this appeal is whether the Public Service Commission of Maryland in limiting the United Railways and Electric Company of Baltimore to a rate schedule which permits it to earn reasonably efficient management a return of 6.26% on the total value of its property deprives it of its property without due process of law.

While that question was considered and decided adversely to appellant's contention in West vs. United Railways and Electric Company 155 Md. 572, 142 Atl. 870, the decree in that case was reversed and the case remanded that the allowance made by the Commission for the annual depreciation of the Company's property might be reconsidered and dedetermined in accordance with the views expressed in the opinion.

Subsequent to the remand proceedings were had which resulted in increasing the allowance for depreciation by $755,116, and following that increase the Commission revised the schedule of rates fixed in its order involved in the former appeal, and permitted appellant to charge a base rate of 8¾ cents when tokens were sold, or ten cents cash, for the transportation of passengers over twelve years of age, as compared with 8⅓ cents when tokens were sold or 9 cents cash, allowed by its previous order.

Thereupon the appellant filed a supplemental bill in which omitting so much as is merely argumentative or historical

it alleges: "As the Commission thus found, all the evidence before the Commission showed, and the fact is, said increase in rate permitted by Order No. 13430 is not more than is required to increase the Company's annual return by $755,116, viz, the amount of the increase in annual allowance for depreciation, and the increased rates permitted by Order No. 12639, as so amended by Order No. 13420, will yield the Company an annual return not more in any event than $4,691,606, the amount which the Commission in its opinion filed February 10, 1928, found could reasonably be expected from the rates fixed by Order No. 12639. * * * The annual return that can be expected by the Company from said rates (as increased by Order No. 13420) is not more than $4,691,606, and not more than 6.26 per cent. on the fair value of the Company's property, and an annual return of $4,691,606 or of 6.26 per cent, would be substantially less than a fair return such as the Company is entitled under the Constitution of the United States, and also under the Maryland Bill of Rights and the Public Service Commission Law, to be permitted to earn. Said Order No. 12639, as so amended by Order No. 13420, of the Commission, therefore, and any prior orders of the Commission limiting the Company to the same or lower rates, are contrary to the Fourteenth Amendment of the Constitution of the United States and to the Maryland Bill of Rights and the Public Service Commission Law and are null and void, and, so long as they are enforced, deprive the Company of its property without due process of law, and said orders and the rates, regulations, practices, acts and services fixed thereby are unlawful and unreasonable.

In each and all of the following respects Order No. 12639, (as amended by Order No. 13420), of the Commission, and the Commission's opinion made a part of Order No. 12639, (as modified by the opinion made a part of Order No. 13420), and any prior orders of the Commission limiting the Company to the same or lower rates, and the rates, regulations, practices, acts and services fixed by said orders, or any of them, are unlawful, unreasonable, arbitrary, unsupported by any substantial evidence, contrary to the facts established by substantial evidence, confiscatory and contrary to the Fourteenth Amendment of the Constitution of the United States and to the Maryland Bill of Rights and the

Public Service Commission Law and null and void. * * *

The Commission by said order burdened the Company with a substantial loss of revenue by requiring it to abolish the second fare upon its Halethorpe line, which loss, without any compensating offset, and without any lawful reason for abolition of said fare, further diminishes the inadequate return upon the Company's property. * * *

That the action of the Commission in so refusing to allow the Company to charge and collect for its service the rates of fare proposed and required by it, limiting it to the rates specified and provided in said opinion and said order of February 10, 1928, as modified and amended by said opinion and said order of November 28, 1929, and abolishing its second fare on its Halethorpe line is therefore not only unreasonable but confiscatory, unlawful and void, and constitutes a taking of the Company's property without adequate compensation and without due process of law."

Upon those allegations it prayed:

"That the aforesaid Order No. 12639, passed February 10, 1928, as amended by the aforesaid Order No. 13420, passed November 28, 1928, of the Public Service Commission of Maryland, the defendants herein, in so far as it purports to limit the rates of the United Railways and Electric Company of Baltimore, the plaintiff herein, so as to prevent the plaintiff from charging a flat fare of ten cents or from making similar increases in com-utation and other special rates or from continuing the first and second fare zones on the Halethorpe line as they existed on February 10, 1928, and any prior orders of the Commission in so far as they purport so to limit the rates of the Company, and the rates, regulations, practices, acts and services fixed by said orders or any of them in so far as they purport to limit the Company as aforesaid, be adjudged and decreed to be unlawful, unreasonable, unconstitutional, null and void and be vacated and set aside.

That the defendants, Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, members, constituting the Public Service Commission of Maryland, and their respective successors in office, agents and attorneys, and all persons acting under their authority may be perpetually and also preliminarily pending this suit, restrained and

enjoined from enforcing or continuing in force against the pla-ntiff the aforesaid Order No. 12639 (as amended by the aforesaid Order No. 13420) in so far as it purports to limit the rates of the plaintiff so as to prevent the plaintiff from charging a flat rate of ten cents or from making similar increases in commutation and other special rates or from continuing the first and second fare zones on the Halethorpe line as they existed on February 10, 1928, or any prior orders of the Commission in so far as they purport so to limit the rates of the Company."

The appellee answered the bill stating that "on November 28, 1928, the Commission filed an opinion and passed Order No. 13420 (of which the opinion was made part), by which opinion it found that $1,638,660, (instead of $883,544 previously allowed) is the proper annual amount to be allowed for depreciation, to conform with the opinion of the Court of Appeals of Maryland, and increased the Company's rate of fare to ten cents cash, or four tokens for thirty five cents, other fares to remain as established by Order No. 12639. That the increase in fares so allowed by the Commission was intended to furnish only sufficient revenues to supply the increase made in the annual depreciation allowance of the Company, "admitting that" (1) that the present fair value of the Company's property used in the public service is $75,000,000; (2) that the annual return which the Commission estimated would be yielded by the rates fixed in Order No. 12639 was $4,961,606; and that the same would amount to a return of 6.26 per cent. on the fair value of the Company's property," and denying the allegations of the ninth and tenth paragraphs from which we have quoted.

The case was heard upon those pleadings, and a transcript of the proceedings before the Commission and at the conclusion of the hearing the court refused the injunction prayed and dismissed the Bill. The appeal from that decree submits three questions (1) whether a schedule of rates which permits the appellant to earn 6.26% on the fair value of its property is confiscatory, (2) whether any schedule of rates less than that proposed by it, to wit, a flat rate of ten cents and "similar increases" in commutation and other special rates, is confiscatory, and (3) whether so much of the order of the Commission as consolidates the first and

second fare zones on the Halethorpe line as they existed on February 10th, 1928, is unlawful.

These several questions were, as we have stated, submitted to this court at an earlier stage of this proceeding, West vs. Public Service Commission, supra, and as nothing which has transpired since has any direct connection with them, it is unnecessary to repeat or to restate the reasons which led us in that case to decide upon the evidence now as then, before us: (1) that a rate schedule which permitted the Company to earn by reasonably efficient management 6.26% on the fair value of its property was not confiscatory, (2) that any schedule of rates less than that proposed by the Company, to wit, a flat fare of ten cents and "similar increases" in commutation and other special rates was not necessarily confiscatory, and (3) that the consolidation of the first and second zones in the Halethorpe line was unlawful. But it is sufficient to say, that for the reasons given in the opinion filed in that case, we find no error in the decree from which this appeal was taken, and it will therefore be affirmed.

Decree affirmed with costs.

BOND, C. J.:

While still holding the views expressed in the dissenting opinions filed on the former appeal in this litigation, I take the questions to be closed in this court by the previous decision.

IN COURT OF APPEALS OF MARYLAND, JANUARY TERM, 1929

No. 71

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

vs.

HAROLD E. WEST et al., Constituting the Public Service Commission of Maryland

DECREE—Filed March 20, 1929

The appeal in this case standing ready for hearing, was submitted on brief by Counsel for the respective parties,

and the proceedings have since been considered by the Court.

It is thereupon this 20th day of March, 1929, by the Court of Appeals of Maryland, and by the authority thereof, adjudged, ordered and decreed that the decree dated January 10th, 1929, of the Circuit Court No. 2 of Baltimore City, be and the same is hereby affirmed with costs.

Carroll T. Bond, Jno. R. Pattison, Hammond Urner, Wm. H. Adkins, T. Scott Offutt.

IN COURT OF APPEALS OF MARYLAND

[Title omitted]

PETITION FOR APPEAL AND ORDER ALLOWING SAME—Filed March 23, 1929

To the Honorable Carroll T. Bond, Chief Judge of the Court of Appeals of the State of Maryland:

The petition of The United Railways and Electric Company of Baltimore, a body corporate, appellant in the Court of Appeals of Maryland, plaintiff in the Circuit Court No. 2 of Baltimore City and hereinafter called "plaintiff," respectfully shows:

1. That as fully appears from the record in this cause, this cause is and was in the Circuit Court No. 2 of Baltimore City and in the Court of Appeals of Maryland a suit where was drawn in question the validity of certain statutes of the State of Maryland, viz., statutes relating to the Public Service Commission of Maryland and certain orders of the Public Service Commission of Maryland purporting to have been made pursuant to said statutes, on the ground of said statutes (including said orders) being repugnant to the Constitution of the United States, and the final decree of the Court of Appeals of Maryland made and entered in said cause on March 20, 1929, was and is a decision in favor of the validity of said statutes (including said orders).

2. Your petitioner, for the reasons specified in the assignment of errors which is filed herewith, conceives itself

aggrieved by said final decree made and entered by the Court of Appeals of Maryland on March 20, 1929.

Wherefore your petitioner prays that an appeal may be allowed herein from the Court of Appeals of Maryland to the Supreme Court of the United States and that an order may be passed fixing the amount of the bond on said appeal.

Henry H. Waters, J. C. France, Charles McA. Howard, Chas. Markell, Counsel for the United Railways and Electric Company of Baltimore, Appellant.

And now, to wit, on March 23d, 1929, it is ordered that an appeal from the Court of Appeals of Maryland to the Supreme Court of the United States be allowed as prayed, upon the filing of a bond in the sum of five hundred dollars ($500) with good and sufficient security and Fidelity and Deposit Company of Maryland is accepted as surety on said bond and said bond is now approved.

Carroll T. Bond, Chief Judge of the Court of Appeals of the State of Maryland.

IN COURT OF APPEALS OF MARYLAND

[Title omitted]

ASSIGNMENT OF ERRORS—Filed March 23, 1929

Now comes The United Railways and Electric Company of Baltimore, a body corporate, appellant in the Court of Appeals of Maryland, plaintiff in the Circuit Court No. 2 of Baltimore City and hereinafter called "plaintiff," and for its assignment of errors shows:

1. That the Court of Appeals of Maryland erred in not reversing the decree of the Circuit Court No. 2 of Baltimore City dismissing the plaintiff's supplemental bill of complaint and in not adjudging and decreeing that the rates fixed by Order No. 12,639 of the Public Service Commission of Maryland, passed on February 10, 1928, as

amended by Order No. 13,420 passed on November 28, 1928, and said orders and prior orders limiting rates charged by the plaintiff are unconstitutional and fail to allow to the plaintiff a fair return on the fair value of its property, (i. e., that they deprive the plaintiff of its property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States) and in not vacating and setting aside Order No. 12,639, as amended by Order No. 13,420, in so far as the same purports to limit the rates of the plaintiff and in not enjoining the defendants (appellees in the Court of Appeals of Maryland, defendants in the Circuit Court No. 2 of Baltimore City and herein called "defendants") against enforcing against the plaintiff the provisions of said Order No. 12,639, as amended by Order No. 13,420, or any prior orders, in so far as the same limit or purport to limit the rates of fare to be charged by the plaintiff.

2. That the Court of Appeals of Maryland erred in not holding that a schedule of fares which permits the plaintiff to earn a return of not more than 6.26 per cent on the fair value of its property is confiscatory and deprives the plaintiff of its property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States, and in holding that Order No. 12,639 of the Public Service Commission of Maryland, as amended by Order No. 13,420, and the schedule of rates fixed thereby, are not confiscatory and do not deprive the plaintiff of its property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States.

3. That the Court of Appeals of Maryland erred in holding that the question whether fares which permit a return of only 6.26 per cent are confiscatory "must be approached * * * from the standpoint of the State" and in such approach "factors * * * such as the nature and necessity of the service, the effect of its continuance or withdrawal, both upon the security holders of the corporation, and upon property values, and the welfare of the people in the territory served by it, the extent to which the State itself is a partner in the enterprise, and the circumstances and condi-

tions under which the [plaintiff] acquired and exercises its franchises and privileges may become of paramount and controlling importance"; thus holding that, under the guise of "approaching" the question what is a fair return and giving weight to various "factors" in the question, the question may actually be ignored and evaded and supplanted by various so-called "factors" which do not properly control or affect the question at all.

4. That the Court of Appeals of Maryland erred in holding that the plaintiff's constitutional right to a fair return on the fair value of its property affords no excuse for "increasing [its rates] to a point which will not only be burdensome to the traveling public but will at the same time yield to the [plaintiff] a greater return than it has ever received, and greater than that actually received by others operating in the same field elsewhere under substantially the same conditions" [i. e., under confiscatory rates], and that "whether a given rate is burdensome to the public involves an extremely difficult and troublesome question, the answer to which, except in extreme cases, can only rest in the judgment of the Commission operating upon varying factors each of which is entitled to some weight, but no one of which ordinarily is controlling," thus holding that private property embarked in a utility business does not "rest secure under the constitutional protection which extends * * * to the right to receive just compensation for the service given to the public" [The Minnesota Rate Cases, 230 U. S. 352, 434] but that this constitutional protection "can rest only in the judgment of the Commission" and that past confiscation of the plaintiff's property and present confiscation elsewhere legalize perpetual confiscation of the plaintiff's property.

5. That the Court of Appeals of Maryland erred in holding that "in determining whether the rates fixed by the Commission are confiscatory we are finally remitted to a few simple realities, such as the past earnings of the Company, [to which the Court of Appeals gives effect precisely the opposite of that given by the Supreme Court of the United States], the returns usually received by other companies engaged in the same business under somewhat similar conditions [i. e., under confiscatory rates], the rates

which the [plaintiff] has voluntarily fixed for its service in the past, the decrease in the purchasing power of the dollar, and the effect which other orders of the Commission have had upon the earning power of the [plaintiff]", but that the last two of these factors (regarded by the Court of Appeals as tending to support the plaintiff's position) "were considered fully by the Commission when it fixed the base fare at 7½ cents in 1924, and in view of that finding and of the further fact that the record does not disclose any data sufficiently specific to enable us to say that it was unlawful, we are not inclined to give them any controlling weight now"; thus holding (1) that the question whether rates are confiscatory may be determined from "simple realities" which do not properly affect the question at all and (2) that on this question of confiscation a previous rate order is (unless now specifically proved to have been unlawful) res judicata as to facts then considered by the Commission, although (a) commission rate orders do not so operate and (b) this 1924 rate order could not so operate because the value of the plaintiff's property had not been determined at all and in that case the question of confiscation could not be and was not determined by the Commission and the Commission's own views were expressly tentative, pending determination of the value of the plaintiff's property.

6. That the Court of Appeals of Maryland erred in not holding that failure of a State to "provide a fair opportunity for submitting" the question of confiscation "to a judicial tribunal for determination upon its own independent judgment as to both law and facts" is a deprivation of liberty and property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States, and in holding that the Supreme Court of the United States (in so holding) did not mean what it said but meant precisely the opposite.

7. That the Court of Appeals of Maryland erred in confusing the opinion of the Supreme Court in McCardle vs. Indianapolis Water Works Co., 272 U. S. 419, with the dissenting opinion, treating the dissenting opinion as an "interpretation" instead of a negation of the Court's opinion, and thus acting on that case as not deciding what it very clearly did decide, viz., that on the evidence therein and the

authority of recent decisions in other cases, rates yielding a return of less than 7 per cent. would be confiscatory.

8. That the Court of Appeals of Maryland erred in holding that decisions of the Supreme Court of the United States that certain utilities are entitled to certain returns on the value of their properties "are uniformly found to be based upon facts peculiar to the several cases" and in the instant case the Court of Appeals "is little aided by what" the Supreme Court "may upon different facts have found to be lawful or confiscatory, fair or unreasonable rates."

9. That the Court of Appeals of Maryland erred (when holding that Maryland statutes deprive all Maryland courts of the right and power to enjoin enforcement of confiscatory rate orders, thereby deprive the plaintiff of all judicial remedy against the enforcement of confiscatory rate orders, and in lieu of all judicial remedy merely remand the plaintiff for relief against confiscation to the confiscators themselves) in not holding that Maryland statutes, so construed and applied, deprive the plaintiff of its liberty and property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States.

10. That the Court of Appeals of Maryland erred (when holding that by reason of Maryland statutes, one confiscatory rate order might be vacated by the Courts, leaving prior orders still more confiscatory in force, but all unconstitutional orders can not be vacated by the Courts, thus holding that the Courts can protect constitutional rights against one unconstitutional order but, when all orders are unconstitutional, can only remand the plaintiff to further action by the confiscators) in not holding that the Maryland statutes, so construed and applied, deprive the plaintiff of its liberty and property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States.

11. That the Court of Appeals of Maryland erred (when holding that Maryland statutes not only empower the Public Service Commission to regulate the plaintiff's rates but also deprive the plaintiff of its constitutional right, subject to regulation, to initiate and make rates) in not holding that Maryland statutes, so construed and applied, de-

prive the plaintiff of its liberty and property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States.

12. That the Court of Appeals of Maryalnd erred (when holding that even the fact that all Commission rates are confiscatory does not "authorize * * * the [plaintiff] to fix" its own rates (subject to the continuing power of regulation) or the Courts to set aside all unconstitutional Commission orders and "leave the question of rates * * * to the discretion of the [plaintiff]" (subject to regulation), but "under the statute the power to [fix rates] is in the Commission alone") in not holding that the Maryland statute, so construed and applied, makes the Commission "the financial manager" of the plaintiff and clothes the Commission "with the general power of management incident to ownership" [Southwestern Tel. Co. v. Public Service Commission, 262 U. S. 276, 289] and thereby deprives the plaintiff of its liberty and property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States.

13. That the Court of Appeals of Maryland erred in not reversing the decree of the Circuit Court No. 2 of Baltimore City dismissing the plaintiff's supplemental bill of complaint, and in not adjudging and decreeing that that portion of Order No. 12,639 of the Public Service Commission of Maryland which extended the first fare zone on the plaintiff's Halethorpe line to the terminus of said line at Halethorpe is unconstitutional and deprives the plaintiff of its property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States, and in not vacating and setting aside said portion of said order and enjoining the defendants against enforcing the provisions of said order.

Wherefore the plaintiff prays that the said decree of the Court of Appeals of Maryland made and entered on March 20, 1929, be reversed and that said Court may be directed to enter a decree in favor of the plaintiff.

Chas. Markell, Henry H. Waters, J. C. France, Charles McA. Howard, Counsel for the United Railways and Electric Company of Baltimore, Appellant.

Bond on Appeal for $500.00, approved and filed March 23, 1929, omitted in printing.

Citation, in usual form, showing service on Thomas J. Tingley and Raymond S. Williams, filed March 23, 1929, omitted in printing.

IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND STIPULATION TO PRINT ENTIRE RECORD—Filed March 27, 1929

Comes now The United Railways and Electric Company of Baltimore, the appellant in the above entitled cause, and adopts its assignments of error as the points upon which it intends to rely in this Court in said cause.

Henry H. Waters, Chas. Markell, Charles McA. Howard, Counsel for The United Railways and Electric Company of Baltimore, Appellant.

Service of copy of above designation of points to be relied on admitted this 23d day of March, 1929.

Thomas J. Tingley, Raymond S. Williams, Counsel for Public Service Commission of Maryland, Appellees.

STIPULATION

In lieu of designation and counter-designation by the respective parties to the above appeal of the parts of the record to be printed, it is hereby stipulated and agreed as follows:

Both parties to the above appeal state that in their opinion the whole of the record as filed is necessary for the consideration of the case, that said record has been printed and used upon the hearing in the Court below, viz., the Court of Appeals of Maryland, that twenty-five (25) copies of said record as printed for use in the Court of Appeals of Maryland have been transmitted to the Clerk of the Su-

preme Court of the United States (including the portion of said record so printed and transmitted on the former appeal to the Supreme Court of the United States, No. 464, October Term, 1928, dismissed for want of finality in the decree appealed from), and that said copies so printed may be used by the Clerk of the Supreme Court of the United States in the preparation and as a part of the printed record of the Supreme Court of the United States in the above entitled case.

Charles McA. Howard, Chas. Markell, Henry H. Waters, Counsel for The United Railways and Electric Company of Baltimore, Appellant. Thomas J. Tingley, Raymond S. Williams, Counsel for Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, Constituting the Public Service Commission of Maryland, Appellees.

[File endorsement omitted.]

Clerk's certificate to foregoing transcript omitted in printing.

Endorsed on cover: File No. 34,101. Maryland Court of Appeals. Term No. 792. The United Railways and Electric Company of Baltimore, appellant, vs. Harold E. West, Chairman, and J. Frank Harper et al., constituting the Public Service Commission of Maryland. Filed March 27th, 1929. File No. 34,101.

IN COURT OF APPEALS OF MARYLAND

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, Appellant,

vs.

HAROLD E. WEST, Chairman, and J. FRANK HARPER and Steuart Purcell, Members, Constituting the Public Service Commission of Maryland, Appellees

PETITION FOR APPEAL AND ORDER ALLOWING SAME—Filed April 9, 1929

To the Honorable Carroll T. Bond, Chief Judge of the Court of Appeals of the State of Maryland:

The petition of Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, constituting the Public Service Commission of Maryland, Appellees in the Court of Appeals of Maryland, defendants in the Circuit Court No. 2 of Baltimore City, and hereinafter called the Commission, respectfully shows:

1. That, as fully appears from the record in this case, this case is and was in the Circuit Court No. 2 of Baltimore City and in the Court of Appeals of Maryland, a suit wherein was drawn in question by The United Railways and Electric Company of Baltimore, hereinafter called the Company, the validity of a certain order and/or orders of the Public Service Commission of Maryland, on the ground of the same being repugnant to the Fourteenth Amendment to the Constitution of the United States.

2. The validity, in particular, of Order No. 12,639 of the Commission, passed February 10, 1928, was drawn in question on the ground that the said Order established rates to be charged by the Company for street railway transportation in the City of Baltimore, Maryland, and its vicinity, which resulted in a rate of return of 6.26 per cent. to the said Company, which rate of return, it was alleged, was confiscatory within the prohibition of the Fourteenth Amendment to the Constitution of the United States; and on the further ground, inter alia, that the Commission, in fixing

the said rates, calculated the annual depreciation allowance granted to the Company so as to restore the original cost of property consumed or retired in public service, rather than the present day value of such property, which action was also alleged by the Company to be confiscatory within the prohibition of the said Amendment. The rates in question, fixed by the said Order of the Commission, were a cash fare of nine cents, with three tokens for twenty-five cents.

3. The Court of Appeals of Maryland held that the rate of return estimated to result from the said rates of fare was not confiscatory, but further held that the action of the Commission in restoring through the annual depreciation allowance of the Company the cost of depreciable property consumed or retired in public service, rather than its present day value, as above, was confiscatory, and hence that the Company might not be actually receiving the return of 6.26 per cent. estimated by the Commission to be yielded by the rates as established above. The Court of Appeals accordingly remanded the case, with directions to the Commission to further consider the question of depreciation, investigate the property of the Company with a view to a determination of its condition and probable life, and if necessary, readjust the rate schedules of the Company so as to reflect any increased amount which might be found necessary, in order to restore to the Company the present day value, rather than the cost, of property consumed or retired in the public service.

4. This decree of the Court of Appeals of Maryland was passed on July 16, 1928. Thirty days thereafter the mandate of the Court of Appeals was directed to and received by the Circuit Court No. 2 of Baltimore City, which Court, on August 31st, 1928, entered an order remanding the case to the Commission for further proceedings as directed by the Court of Appeals.

5. The Commission, pursuant to the direction of the Court of Appeals, made an investigation of the condition of the property of the Company, held hearings thereon and as a result thereof, on the twenty-eighth day of November, 1928, passed its opinion and order, the latter being Order No. 13,420, in which it found that, on the basis of restoring through the annual depreciation allowance of the Company,

the present day value of property consumed or retired in service, the Company was entitled to an allowance of $1,638,660 for its annual depreciation allowance, the same being an increase of $755,116 over the allowance previously found, which was calculated to restore the cost of the Company's property and allowed an increase in the Company's rate of fare charged to the public to a cash fare of ten cents, with four tokens for thirty-five cents.

6. The Company, on August 25, 1928, secured an order from the Chief Judge of the Court of Appeals of Maryland allowing an appeal from the portions of the said decree of the said Court of Appeals, adverse to its contentions, including therein the contention that the rate of return estimated to be yielded by the rates fixed by the Commission was confiscatory within the prohibition of the Fourteenth Amendment to the Constitution of the United States; that the action of the Court, in not vacating, setting aside or enjoining the rates fixed by the Commission, instead of remanding the case, in view of its finding as to the proper basis for the annual depreciation allowance, was also confiscatory; and that the action of the Court in sustaining the Commission with respect to a provision of their order directing the extension of the single fare zone to the community of Halethorpe, situated beyond the City limits of Baltimore, was also confiscatory. This appeal was docketed as Case No. 464 in the October Term, 1928, of the Supreme Court of the United States.

7. The Commission, on September 19th, 1928, secured an order from the Chief Judge of the Court of Appeals of Maryland, allowing an appeal from the portion of the said decree of the Court of Appeals, holding that the action of the Commission in calculating the annual depreciation allowance of the Company so as to restore cost, and not present day value, of property of the Company consumed or retired in the public service, was confiscatory. This appeal was docketed as Case No. 465 in the October Term, 1928, of the Supreme Court of the United States. The Commission also filed in the said proceedings a petition for a writ of certiorari on the said grounds.

8. The Supreme Court, on November 19, 1928, dismissed both appeals and denied the petition for certiorari on the

ground that the decree sought to be reviewed was not a final one (73 L. ed. 180).

9. The Company thereupon filed a Supplemental Bill of Complaint in the Circuit Court No. 2 of Baltimore City, containing the same allegations set forth in the original Bill with respect to the alleged confiscatory character of the rate of return yielded by the rates fixed by the Commission and the alleged confiscatory character of the provisions in the Order of the Commission extending the single fare zone to Halethorpe. The Supplemental Bill of Complaint set forth the proceedings of the Commission with respect to the annual depreciation allowance held pursuant to the direction of the Court of Appeals on remand, and recited that the increase in fare to a fare of ten cents cash, with four tokens for thirty-five cents, fixed by the Commission as a result thereof in its Order No. 13,420, would not yield revenues in excess of the amount found necessary by the Commission to increase the annual depreciation allowance of the Company to the extent above set forth. The Circuit Court No. 2 of Baltimore City, on January 10, 1929, refused an injunction as prayed in the Supplemental Bill of Complaint, refused to vacate and set aside Order No. 12,639, as amended by Order No. 13,420, and/or prior orders of the Commission, insofar as they fixed or limited the schedule of fares to be charged by the Company, and dismissed the Supplemental Bill of Complaint with costs. This action was affirmed by the Court of Appeals of Maryland on appeal by the Company in an opinion and decree dated March 20th, 1929. From this action of the Court of Appeals, the Company has again appealed to the Supreme Court of the United States.

10. That the question of whether cost or value of property consumed or retired in service should be restored through the operation of the annual depreciation allowance fixed for the Company, is an integral and indispensable part of the present case, and of the decree entered by the Court of Appeals therein, and that the case cannot be properly or adequately considered without determining it, and that the decree of the Court of Appeals of Maryland, dated July 16, 1928, is single and inseverable, and that the decree of the Court of Appeals dated March 10, 1929, cannot

properly be reviewed without consideration of that question.

11. The Commission is advised and believes that the decree of the Court of Appeals of Maryland, dated July 16, 1928, properly construed, determines that it is confiscatory within the prohibition of the Fourteenth Amendment to the Constitution of the United States for the Commission to so calculate the Company's annual allowance for depreciation as to restore the cost, rather than the present day value, of property consumed or retired in the public service, and hence determines a Federal question of substance not theretofore determined by the Supreme Court of the United States, in a manner not in accord with the decisions of that Court in cases involving related questions, and unsound and untenable, and in conflict with the trend of authorities.

12. Your petitioners, for the reasons specified in the assignment of errors which is filed herewith, conceive themselves aggrieved by the said final decree made and entered by the Court of Appeals of Maryland on March 20th, 1929, and the decree made and entered by the Court of Appeals of Maryland on July 16, 1928, made final thereby, insofar as the same determined that the restoration through the annual depreciation allowance of the Company of the cost, rather than the present day value of its property consumed or retired in the public service, is confiscatory within the prohibition of the Fourteenth Amendment to the Constitution of the United States.

Wherefore, your petitioners pray that a cross-appeal may be allowed herein from the Court of Appeals of Maryland to the Supreme Court of the United States, and that an order may be passed fixing the amount of the bond on the said cross-appeal.

Thomas J. Tingley, Raymond S. Williams, Counsel for Harold E. West, Chairman, et al., Constituting the Public Service Commission of Maryland, Cross-appellants.

Order

And now, to wit, on April 9th, Nineteen Hundred and Twenty-nine, it is ordered that an appeal from the Court

of Appeals of Maryland to the Supreme Court of the United States be allowed as prayed, upon the filing of a bond in the sum of Five hundred dollars ($500), with good and sufficient security and The United States Fidelity & Guaranty Company is accepted as surety on said bond and said bond is now approved.

Carroll T. Bond, Chief Judge of the Court of Appeals of the State of Maryland.

IN COURT OF APPEALS OF MARYLAND

[Title omitted]

ASSIGNMENT OF ERRORS ON CROSS-APPEAL OF HAROLD E. WEST ET AL., CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND—Filed April 9, 1929

Now come Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, constituting the Public Service Commission of Maryland, appellees in the Court of Appeals of Maryland, defendants in the Circuit Court No. 2 of Baltimore City, and hereinafter called Public Service Commission of Maryland, and for their assignment of errors show:

1. That the Court of Appeals erred in not reversing the decree of the Circuit Court No. 2 of Baltimore City, dated May 10, 1928, insofar as said decree adjudged and decreed that the annual depreciation allowance of The United Railways and Electric Company of Baltimore, fixed by Order No. 12,639 of the Public Service Commission of Maryland, passed on February 10, 1928, should be calculated to restore to the said Company the present value of its depreciable property, and that calculating said allowance so as to restore to the Company the cost of its depreciable property, (as was done by the said Commission in the said Order), was confiscatory, and deprived the Company of its property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States.

2. That the Court of Appeals of Maryland erred in holding in its Opinion and Decree dated July 16, 1928, made final by its decree entered March 20, 1929, that the annual depreciation allowance of The United Railways and Electric

Company of Baltimore, fixed by the Order No. 12,639 of the Public Service Commission of Maryland, passed on February 10, 1928, so as to restore to the Company the cost of its depreciable property, and not the present value thereof, was confiscatory, and deprived the Company of its property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States.

Wherefore the Public Service Commission of Maryland prays that the said decree of the Court of Appeals of Maryland made and entered on July 16, 1928, and made final by its decree dated March 20, 1929, be reversed, and that said Court may be directed to enter a decree in favor of the Public Service Commission of Maryland.

Thomas J. Tingley, Raymond S. Williams, Counsel for the Public Service Commission of Maryland, Cross-appellants.

Bond on appeal, approved and filed April 9, 1929, omitted in printing.

Citation, in usual form, showing service on Charles McHenry Howard et al., omitted in printing.

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1928.

No. 826

STATEMENT OF POINTS TO BE RELIED UPON AND STIPULATION AS TO PRINTING—Filed April 10, 1929.

Come now Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, constituting the Public Service Commission of Maryland, cross-appellants in the above entitled cause, and adopt their assignments of error as the points upon which they intend to rely in said cause.

Thomas J. Tingley, Raymond S. Williams, Counsel for Harold E. West et al., Constituting the Public Service Commission of Maryland, Cross-appellants.

Service of copy of within designation of points to be relied on admitted this 9th day of April, Nineteen Hundred and Twenty Nine.

Charles McHenry Howard, Charles Markell, Henry H. Waters, Counsel for the United Railways and Electric Company of Baltimore, Cross-appellee.

STIPULATION

In lieu of designation and counter-designation by the respective parties to the above appeal of the parts of the record to be printed, it is hereby stipulated and agreed as follows:

Both parties to the above appeal state that in their opinion the whole of the record as filed is necessary for the consideration of the case, that said record has been printed and used at the hearing in the Court below, namely, the Court of Appeals of Maryland, that twenty-five (25) copies of said record as printed for use in the Court of Appeals of Maryland have been transmitted to the Clerk of the Supreme Court of the United States (including the portion of said record so printed and transmitted on the former appeal to the Supreme Court of the United States, No. 465, October Term, 1928, dismissed for want of finality in the decree appealed from), and that said copies so printed may be used by the Clerk of the Supreme Court of the United States in the preparation and as part of the printed record of the Supreme Court of the United States in the above entitled case.

Thomas J. Tingley, Raymond S. Williams, Counsel for Harold E. West, Chairman, et al., Constituting the Public Service Commission of Maryland, Appellants. Charles McHenry Howard, Henry H. Waters, Chas. Markell, Counsel for the United Railways and Electric Company of Baltimore, Appellee.

[File endorsement omitted.]

Clerk's certificate to foregoing omitted in printing.

Endorsed on cover: File No. 34,135. Maryland Court of Appeals. Term No. 826. Harold E. West, chairman, and J. Frank Harper and Steuart Purcell, members, constituting the Public Service Commission of Maryland, appellants, vs. The United Railways and Electric Company of Baltimore. (Vide No. 792.) Filed April 10th, 1929. File No. 34,135.

(6940)

FILE COPY

Office Supreme C
FILE
APR 26
CHARLES ELMO

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 502. 55

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE,
Appellant,

vs.

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND,
Appellees.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND.

MOTION OF THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, APPELLANT, TO ADVANCE.

Respectfully submitted,

CHARLES MCHENRY HOWARD,
CHARLES MARKELL,
HENRY H. WATERS,
Counsel for The United Railways and Electric Company of Baltimore, Appellant.

CONTENTS.

PAGE

Motion to advance 1

Statement of matter involved 2

Reasons relied on for advancement 4

Consent of Appellees 5

CASES CITED.

Public Service Commission vs. United Railways Co., 155 Md. 572 ..... 3, 4

United Railways and Electric Co. vs. West, 278 U. S. 49 S. Ct. 79 3

West vs. United Railways and Electric Co., 278 U. S. 49 S. Ct. 79 3

West vs. United Railways and Electric Co., 142 Atl. 870. 3, 4

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 792.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE,
Appellant,

vs.

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND,
Appellees.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND.

MOTION OF THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, APPELLANT, TO ADVANCE.

Now comes The United Railways and Electric Company of Baltimore (hereinafter called the Company), appellant in the above entitled cause, and moves that this case be advanced for an early hearing. In support of its motion the Company makes a brief statement of the matter involved and the reasons relied on for the advancement of the hearing of this case.

STATEMENT OF MATTER INVOLVED.

This is an appeal by the Company from a final decree affirming dismissal of a supplemental bill to enjoin enforcement of certain orders of the Public Service Commission of Maryland (hereinafter called the Commission) limiting the Company's carfares and claimed by the Company to be confiscatory. The decree of the Court of Appeals was passed on March 20, 1929; the Company's appeal was applied for and allowed on March 23, 1929. [R. 1716-1718.]

On August 1, 1927, the Company applied to the Commission for an increase in fares (then limited by Commission order to 7½ cents token fare or 8 cents cash) to 10 cents flat. [R. 89.] On February 10, 1928, the Commission passed an order denying the Company's application for a flat 10-cent fare and limiting fares to 8⅓ cents (or 9 cents cash), which the Commission estimated would yield the Company a return of not more than 6.26 per cent. on the undisputed value of its property. [R. 57-59.] The Company filed a bill in the Circuit Court No. 2 of Baltimore City to enjoin enforcement of the order of February 10, 1928, or prior orders as confiscatory because (1) limitation of the Company's rates to yield not more than 6.26 per cent. is confiscatory and (2) the Commission's annual depreciation allowance was fixed on a wrong basis, cost instead of present value of depreciable property, and was grossly inadequate, and the Commission rates therefore would actually yield far less than 6.26 per cent. [R. 5-12.]

The Circuit Court held the Commission's orders and rates confiscatory on both of these grounds and enjoined enforcement. On July 16, 1928, the Court of Appeals (*a*) reversed in part the decree of the Circuit Court and held (CHIEF JUDGE BOND and JUDGE PARKE dissenting) a return of 6.26 per cent. not confiscatory and (*b*) remanded the case to the Commission for further proceedings to determine a proper depreciation allowance, based not on

cost but on present value, and make any rate changes necessary to yield the same estimated return, *i. e.*, not more than 6.26 per cent. [*Public Service Commission vs. United Railways Company*, 155 Md. 572; *sub nomine West vs. United Railways and Electric Co.*, 142 Atl. 870.] On November 19, 1928, the Company's appeal (and also the Commission's) from that decree of the Court of Appeals were dismissed for lack of jurisdiction on the ground that the decree of the Court of Appeals was not a final decree. [*United Railways and Electric Company of Baltimore vs. West*, October Term, 1928, No. 464; *West vs. United Railways and Electric Company of Baltimore*, October Term, 1928, No. 465; 278 U. S. , 49 S. Ct. 79.]

Pursuant to the opinion of the Court of Appeals the Commission on November 28, 1928, determined the proper annual depreciation allowance to be $755,116 more than its previous allowance and accordingly amended its order of February 10, 1928, by limiting fares to 8¾ cents (or 10 cents cash) instead of 8⅓ cents (or 9 cents cash). [R. 1695-1697.] This increase in fare was allowed to furnish *only* increased revenues equal to the increase in depreciation allowance, *i. e.*, to yield not more than 6.26 per cent. [R. 1695, 1699.] The Company filed a supplemental bill in the Circuit Court to enjoin enforcement of the Commission's order of February 10, 1928, as amended by the order of November 28, 1928, as confiscatory. [R. 1681-1689.] The Circuit Court, in accordance with the opinion of the Court of Appeals, dismissed the supplemental bill; the Court of Appeals, for the reasons given in its opinion on the first appeal, affirmed the decree dismissing the supplemental bill. [R. 1712-1716.]

REASONS RELIED ON FOR ADVANCEMENT.

The principal question presented on this appeal is whether the Commission's limitation of rates to a return of not more than 6.26 per cent. is confiscatory—the uncontradicted evidence showing that since July 1, 1920, the average cost to the Company of *borrowed* money (other than current bank loans) was 7.23 per cent., the lowest 6.6 per cent, the last 7.32 per cent. [155 Md. 611, 591, 142 Atl. 884-885, 875. R. 1658, 1638], and that this experience is quite in line with the general situation of street railways, though not of other business generally. [R. 1145, 1146.] The Commission rates which the Company claims (and two of the eight judges of the Court of Appeals, as well as the judge of the Circuit Court, hold) to be confiscatory are actually in force and have been in force ever since November 30, 1928.

Until November 30, 1928, throughout the period from the Company's application to the Commission for relief on August 1, 1927, Commission rates still more confiscatory—and ultimately held by both the Circuit Court and the Court of Appeals to have been confiscatory—were continuously in force. For actual losses sustained, so long as past or present confiscatory rates have been or shall continue in force, the Company has no possible redress. The difference between a return of 6.26 per cent., the Commission's maximum estimate, and a return of 8 per cent., to which the Company claims to be entitled, amounts to $1,305,000 per annum (on an undisputed value of $75,000,000). If the position of the Company (and of the two dissenting judges of the Court of Appeals) is eventually sustained by this Court, these losses can never be recovered.

The instant case affects practically all carfares in Baltimore. The questions presented are of public interest to the Commission and to the people of Baltimore as well as to the Company. The Company however is forced to bear the entire loss until the decision of this Court, even if the deci-

sion is eventually in favor of the Company. Interlocutory relief is impossible. The practical difficulties of providing for a possible refund of part of every carfare in Baltimore —and the action of this Court a year ago in the New York carfare case—make it useless for the Company to ask the Court of Appeals or this Court to stay the Commission's rate order and permit the Company to charge higher rates *pendente lite* and give security for refunds. The only possible means therefore of minimizing the heavy losses already sustained by the Company and still being sustained, in the event that the Company's position is ultimately upheld by this Court, is advancement of the hearing of the instant case by this Court.

If the instant case is advanced, the Commission's cross-appeal, No. 826, will (if not dismissed for lack of jurisdiction) doubtless also be advanced. The Commission's appeal presents only one question, viz., whether the Company's annual depreciation allowance should be based on present value or on cost.

Respectfully submitted,

CHARLES MCHENRY HOWARD,
CHARLES MARKELL,
HENRY H. WATERS,
Counsel for The United Railways and Electric Company of Baltimore, Appellant.

The appellees consent to advancement of this case for hearing at any time after the present term.

RAYMOND S. WILLIAMS,
THOMAS J. TINGLEY,
Counsel for the Public Service Commission of Maryland, Appellees.

FILE COPY

APR 18 192
CHARLES ELMORE CR
C

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 722. 55

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE,
Appellant,

vs.

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND,
Appellees.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND.

STATEMENT OF THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, APPELLANT, AS TO JURISDICTION.

Respectfully submitted,

CHARLES MCHENRY HOWARD,
CHARLES MARKELL,
HENRY H. WATERS,
Counsel for The United Railways and Electric Company of Baltimore, Appellant.

CONTENTS.

PAGE

Statutory provision, nature of case and of rulings below and citation of cases 1

Facts 2

Date of decree and date of appeal 4

CASES CITED.

Bluefield Co. vs. Public Service Commission, 262 U. S. 679 2

King Manufacturing Co. vs. Augusta, 277 U. S. 100 2

Live Oak Association vs. Railroad Commission, 269 U. S. 354 2

Northern Pacific Railway Co. vs. Department of Public Works, 268 U. S. 39 2

Oklahoma Gas Co. vs. Russell, 261 U. S. 290 2

Public Service Commission vs. United Railways Co., 155 Md. 572 3

Sultan Railway Co. vs. Department of Labor, 277 U. S. 135 2

United Railways and Electric Co. vs. West, 278 U. S. , 49 S. Ct. 79 3

West vs. United Railways and Electric Co., 278 U. S. , 49 S. Ct. 79 3

West vs. United Railways and Electric Co., 142 Atl. 870 .. 3

STATUTES CITED.

1925 Feb. 13, C. 229, 43 Stat. 936 (Section 237 (a)) of the Judicial Code) 1

1928 Jan. 31, C. 14, 45 Stat. 1

1928 Apr. 26, C. 440, 45 Stat. 1

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 792.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE,
Appellant,

vs.

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND,
Appellees.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND.

STATEMENT OF THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, APPELLANT, AS TO JURISDICTION.

This is an appeal by The United Railways and Electric Company of Baltimore, (hereinafter called the Company), under section 237 (a) of the Judicial Code, (as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, the Act of January 31, 1928, c. 14, 45 Stat. , and the Act of April 26, 1928, c. 440, 45 Stat.), from a final decree of the Court of Appeals of the State of Maryland, a decision in favor of the validity of certain orders, legislative in character, of the Public Service Commission of Maryland (hereinafter called the Commission), and certain Maryland statutes relating to the Commission, in a suit in which the

validity of the orders, and of the statutes (as construed by the Court of Appeals), had been drawn in question on the ground of their being repugnant to the Constitution of the United States [R. 1717]. The orders of the Commission limited rates charged by the Company. These orders of the Commission are "statutes" within the meaning of section 237 (a) of the Judicial Code, as amended. [*Sultan Railway Co. vs. Department of Labor,* 277 U. S. 135; *King Manufacturing Co. vs. Augusta,* 277 U. S. 100; *Oklahoma Gas Co. vs. Russell,* 261 U. S. 290, 292; *Bluefield Co. vs. Public Service Commission,* 262 U. S. 679, 683-684; *Northern Pacific Railway Co. vs. Department of Public Works,* 268 U. S. 39, 42; *Live Oak Association vs. Railroad Commission,* 269 U. S. 354, 356.]

On August 1, 1927, the Company applied to the Commission for an increase in fares (then limited by Commission order to 7½ cents token fare or 8 cents cash) to 10 cents flat. [R. 89.] On February 10, 1928, the Commission passed an order denying the Company's application for a flat 10 cent fare and limiting fares to 8⅓ cents (or 9 cents cash) instead of 7½ cents (or 8 cents cash). [R. 57-59.] On March 13, 1928, the Company filed a bill in equity in the Circuit Court No. 2 of Baltimore City to enjoin the Commission from enforcing the order of February 10, 1928, or prior orders limiting rates, as confiscatory and contrary to the Fourteenth Amendment. [R. 5-12.] On May 11, 1928, the Circuit Court entered a final decree adjudging the Commission rates and orders confiscatory and contrary to the Fourteenth Amendment and enjoining enforcement. [R. 85-86.] On July 16, 1928, the Court of Appeals (*a*) reversed in part the final decree of the Circuit Court (which enjoined enforcement of the Commission's rates and orders), (*b*) affirmed in part the same decree (which dismissed the Company's bill as to another part of the Commission's order of February 10, 1928) and (*c*) remanded the case (through the Circuit Court) to the Commission for further proceedings

in accordance with the opinion of the Court of Appeals. [R. 1622-1653. *Public Service Comm. vs. United Rwys. Co.*, 155 Md. 572; *sub nomine West vs. United Railways and Electric Company*, 142 Atl. 870.]

On November 19, 1928, appeals by both the Company and the Commission from that decree of the Court of Appeals were dismissed for lack of jurisdiction on the ground that the decree of the Court of Appeals was not a final decree. [*United Railways and Electric Company of Baltimore vs. West*, October Term, 1928, No. 464; *West vs. United Railways and Electric Company of Baltimore*, October Term, 1928, No. 465; 278 U. S. , 49 S. Ct. 79.]

On August 31, 1928, the Circuit Court [the lower state court] passed a decree in accordance with the opinion of the Court of Appeals, remanding the case to the Commission with directions. [R. 1680-1681.] On November 28, 1928, the Commission passed an order, amending its order of February 10, 1928, by limiting fares to 8¾ cents (or 10 cents cash) instead of 8⅓ cents (or 9 cents cash). [R. 1695-1697.] On December 12, 1928, the Company filed a supplemental bill in the Circuit Court to enjoin the Commission from enforcing its orders, including the order of February 10, 1928, as amended by the order of November 28, 1928, on the same constitutional grounds specifically set out in both the original bill and the supplemental bill, viz., that the Commission's rates and orders are confiscatory and contrary to the Fourteenth Amendment. [R. 1681-1689.] On January 10, 1929, the Circuit Court, in accordance with the opinion of the Court of Appeals, sustained the Commission's order of February 10, 1928, as amended by its order of November 28, 1928, and dismissed the supplemental bill. [R. 1705-1706.] On March 20, 1929, the Court of Appeals, for the reasons given in its opinion on the first appeal, affirmed the decree of January 10, 1929, dismissing the Company's supplemental bill. [R. 1712-1716.]

In a word, the Company assailed as confiscatory and contrary to the Fourteenth Amendment, and sought to enjoin, (1) by its original bill the Commission's order of February 10, 1928, and the rates thereby fixed and (2) by its supplemental bill the order of February 10, 1928, as amended by the order of November 28, 1928, and the rates thereby fixed. By the final decree of the Circuit Court, dismissing the Company's supplemental bill, and by the final decree of the Court of Appeals affirming this decree of the Circuit Court, the Commission's order of February 10, 1928, as amended by the order of November 28, 1928, is sustained *in toto* and the Company is denied all relief.

The decree of the Court of Appeals sought to be reviewed was passed on March 20, 1929. [R. 1716-1717.] The Company's appeal was applied for and allowed on March 23, 1929. [R. 1717-1718.]

Respectfully submitted,

CHARLES MCHENRY HOWARD,
CHARLES MARKELL,
HENRY H. WATERS,
Counsel for The United Railways and Electric Company of Baltimore, Appellant.

FILED
OCT 18

No. 55.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE,
Appellant,
vs.
HAROLD E. WEST, Chairman, and J. FRANK HARPER and STEUART PURCELL, Members, Constituting the Public Service Commission of Maryland,
Appellees.

No. 64.

HAROLD E. WEST, Chairman, and J. FRANK HARPER and STEUART PURCELL, Members, Constituting the Public Service Commission of Maryland,
Appellants,
vs.
THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE,
Appellee.

APPEAL FROM, AND CROSS-APPEAL FROM AND PETITION FOR CERTIORARI TO, THE COURT OF APPEALS OF THE STATE OF MARYLAND.

BRIEF FOR THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, APPELLANT IN No. 55 AND CROSS-APPELLEE AND RESPONDENT IN No. 64.

CHARLES McHENRY HOWARD,
CHARLES MARKELL,
HENRY H. WALKER,
Counsel for The United Railways and Electric Company of Baltimore.

CONTENTS.

	Page
Opinion below	2
The question:	
Whether or not limitation by the Commision of the Company's rates to a return of not more than 6.26 per cent. on the undisputed value of its property is confiscatory	2
Jurisdiction	4
Statement of the Case	4
Value of property	7
Revenue from rates	10
Peak load increases while total number of passengers has decreased	11
Annual depreciation allowance	11
Halethorpe	12
The Record	12
Assignment of errors	14
Argument	20
Judicial review of Commission orders	21
The Court of Appeals holds that the courts can not give relief by injunction against confiscation by Commission orders, but for relief can only remand to the confiscator	23
The Court of Appeals holds that in *Ohio Valley Co. vs. Ben Avon Borough,* 253 U. S. 287, this Court meant the exact opposite of what it said and did	26
I. Limitation by the Commission of the Company's rates to a return of less than eight per cent. is confiscatory; the Commission's reasons for finding 6.26 per cent. a fair return have no true relation to the fairness of a return	28

PAGE

The evidence 28

7.23 per cent. cost of *borrowed* money—in line with the general situation of street railways.. 30

The law 32

The Commission 54

Value of service to the customer..... 69

The law 70

The facts 73

II. The Company's annual depreciation allowance is properly based on present value, not on cost, of its depreciable property..... 83

Only one rate base, viz., *value, not cost,* for (1) return *of* property, *i. e.,* allowance for depreciation and retirements and (2) return *on* property 86

III. The abolition of the second fare to Halethorpe is unconstitutional and confiscatory..... 97

Conclusion 104

APPENDIX A—Maryland statutes cited in brief..... 106

APPENDIX B—Opinion of Court of Appeals with Record references inserted 117

TABLE OF CASES CITED.

Aetna Insurance Co. vs. Hyde, 275 U. S. 440..... 53

Alton Water Co. vs. Illinois Commerce Commission, 279 Fed. 869.....43, 46

American Express Co. vs. Caldwell, 244 U. S. 617.... 105

Appeal Tax Court vs. Union R. Co., 50 Md. 274..... 9

Atlantic C. L. R. Co. vs. North Carolina Corporation Commission, 206 U. S. 1..... 26

PAGE

Banton vs. Belt Line Railway, 268 U. S. 413.....24, 101–102

Benson vs. Public Service Commission, 141 Md. 398.. 22

Bluefield Company vs. Public Service Commission, 262 U. S. 679.....26, 30, 32, 33-35, 36, 37, 38, 39, 41–42, 46, 50, 54, 62–63, 65, 88, 90

Board of Public Utility Commissioners vs. New York Telephone Co., 271 U. S. 23..... 95

Board of Public Utility Commissioners vs. Plainfield-Union Water Co., 30 F. (2d) 859..... 49

Bronx Gas and Electric Co. vs. Public Service Commission, 190 App. Div. 13, 180 N. Y. S. 38..... 42

Brooklyn Borough Gas Co. vs. Prendergast, 16 F. (2d) 615 47

Brooklyn Union Gas Co. vs. Prendergast, 7 F. (2d) 628 .....37, 38

Brush Electric Co. vs. Galveston, 262 U. S. 443.....34, 90

Cambridge Electric Light Co. vs. Atwill, 25 F. (2d) 485 48

Cedar Rapids Gas Light Co. vs. Cedar Rapids, 223 U. S. 655 34

Chenoweth vs. Public Service Commission, 143 Md. 622 .....14, 22

Chesapeake & Potomac Telephone Co. vs. Whitman, 3 F. (2d) 938.....51, 95

Chicago I. & L. Ry. vs. United States, 270 U. S. 287... 105

Chicago, Milwaukee & St. Paul Ry. Co. vs. Minnesota, 134 U. S. 418.....24, 70

Chicago, etc., Railway vs. Public Utilities Commission, 274 U. S. 344..... 102

Cincinnati and Suburban Bell Telephone Co., P. U. R. 1924E, 849 96

PAGE

City of Fort Smith vs. Southwestern Bell Telephone Co., 270 U. S. 627 36

City of Toledo vs. Toledo Rys. & Light Co., 259 Fed. 450 43

Clark vs. Harford Agr. and Br. Ass., 118 Md. 608 25

Cleveland vs. Cleveland City Ry. Co., 194 U. S. 517 ... 65

Columbus Gas & Fuel Co. vs. City of Columbus, 17 F. (2d) 630 47

Columbus Ry. & Power Co. vs. Columbus, 249 U. S. 399 65

Consolidated Gas Co. vs. Baltimore City, 101 Md. 541. 9

Consolidated Gas Co. of New York vs. Prendergast, 6 F. (2d) 243 39–42

Covington & Lexington Turnpike Road Co. vs. Sanford, 164 U. S. 578 ..... 70, 71

Darnell vs. Edwards, 244 U. S. 564 71

Dayton-Goose Creek Ry. vs. United States, 263 U. S. 456 ..... 4, 32, 52, 53, 54

Denver vs. Denver Union Water Co., 246 U. S. 178 ... 9

Denney vs. Pacific Tel. & Tel. Co., 276 U. S. 97 47

Depreciation Charges of Telephone Companies, 118 I. C. C. 295 96

Des Moines Gas Co. vs. Des Moines, 238 U. S. 153 34

Detroit vs. Detroit Citizens St. Ry. Co., 184 U. S. 368. 65

Detroit United Ry. vs. Detroit, 248 U. S. 429 65

Detroit United Ry. vs. Michigan, 242 U. S. 238 65

Donham vs. Public Service Commission, 232 Mass. 309, P. U. R. 1919 C, 880 72

Douglas vs. New Haven R. Co., 279 U. S. 377 25

Duluth St. Ry. Co. vs. Railroad Commission, 4 F. (2d) 543 39

PAGE

Ex parte Young, 209 U. S. 123.....24, 25
Galveston Electric Co. vs. Galveston, 258 U. S. 388, 35, 36, 38, 42, 50
Georgia Railway Co. vs. Decatur, 262 U. S. 432..... 65
Georgia Railway Co. vs. Railroad Commission, 262 U. S. 625 .....9, 36, 91
Georgia Railway Co. vs. Railroad Commission, P. U. R. 1925 A, 546..... 96
Gilchrist vs. Interborough Co., 279 U. S. 159.....48, 65
Greencastle Water Works Co. vs. Public Service Commission, 31 F. (2d) 600..... 50
Gregg vs. Public Service Commission, 121 Md. 1..... 14
Havre de Grace Bridge Co. vs. Public Service Commission, 132 Md. 16.....22, 23, 85, 86
Houston Electric Co. vs. City of Houston, 265 Fed. 360 46
Hunter vs. Pittsburgh, 207 U. S. 161..... 103
Idaho Power Co. vs. Thompson, 19 F. (2d) 547..... 47
Interborough Rapid Transit Co. vs. Gilchrist, 26 F. (2d) 912 48
Interstate Commerce Commission vs. Chicago Great Western Ry. Co., 209 U. S. 108..... 102
Joplin Gas Co. vs. Public Service Commission, 296 Fed. 271 46
King's County Lighting Co. vs. Prendergast, 7 F. (2d) 192 .....37, 44, 45
Knoxville vs. Water Co., 212 U. S. 1....63, 85, 86, 87, 88, 93
Laird vs. B. & O. R. R. Co., 121 Md. 179..... 25
Landon vs. Court of Industrial Relations, 269 Fed. 433 .....35, 38
Lehigh Valley R. R. vs. Commissioners, 278 U. S. 24.. 26
Lincoln Gas Co. vs. Lincoln, 250 U. S. 256..32, 34, 38, 43, 50

PAGE

Los Angeles Ry. Corporation, Re, P. U. R. 1928 D, 75. 64

Los Angeles Ry. Corporation vs. Railroad Commission, 29 F. (2d) 140 ..... 49, 64

Louisiana Nav. Co. vs. Oyster Commission, 226 U. S. 99 20

Louisiana Water Co. vs. Public Service Commission, 294 Fed. 954 43

Louisiville & Nashville R. Co. vs. Garrett, 231 U. S. 298 27

Louisville Railway Co. vs. City of Louisville, F. (2d) 50

McCardle vs. Indianapolis Water Co., 272 U. S. 400, 3–4, 9, 18, 31, 37–38, 39, 46, 47, 50

McGraw vs. Merryman, 133 Md. 247 103

Marbury vs. Madison, 1 Cranch, 137 24

Metropolitan Ry. Co. vs. New York, 199 U. S. 1 9

Michigan Public Utilities Commission vs. Michigan St. Telephone Co., 228 Mich. 658, P. U. R. 1925 C, 158, 86, 91–92, 96

Middlesex Water Co. vs. Board of Public Utility Commissioners, 10 F. (2d) 519 48

Miles vs. Public Service Commission, 151 Md. 337 ... 8, 9, 22

Minneapolis vs. Rand, 285 Fed. 818 ..... 34, 38, 42

Minneapolis vs. Street Railway Co., 215 U. S. 417 65

Minnesota Rate Cases, 230 U. S. 352 ..... 16, 70, 88, 92

Missouri Rate Cases, 230 U. S. 474 53

Missouri ex rel. Southwestern Bell Telephone Co. vs. Public Service Commission, 262 U. S. 276, 19, 25, 36, 39, 46, 70, 87, 89–90, 91, 92

Mobile Gas Co. vs. Patterson, 293 Fed. 208 ..... 36, 38

Monroe Gaslight & Fuel Co. vs. Michigan Public Utilities Commission, 11 F. (2d) 319 47

PAGE

New England Divisions Case, 261 U. S. 184..... 71
Newton vs. Consolidated Gas Co., 258 U. S. 165....24, 36, 41
Newton vs. Consolidated Gas Co., 259 U. S. 101..... 66
New York & Queens Gas Co. vs. Prendergast, 1 F. (2d) 351 44
New York & Richmond Gas Co. vs. Prendergast, 10 F. (2d) 167.....44–45
New York Telephone Co. vs. Prendergast, 300 Fed. 822 .....36–37, 38, 40, 43
New York Telephone Co. vs. Prendergast, 11 F. (2d) 162 43
New York Telephone Co. vs. Prendergast, 35 Rate Research 29 50
Norfolk & Western Ry. vs. West Virginia, 236 U. S. 605 .....72, 101, 102
Northern Pacific Ry. Co. vs. Department of Public Works, 268 U. S. 39..... 101
Northern Pacific Ry. Co. vs. North Dakota, 236 U. S. 585 ..... 71–72, 101, 102
O'Brien vs. Board of Public Utility Commissioners, 92 N. J. L. 44, P. U. R. 1919 B 865..... 74
Ohio Utilities Co. vs. Public Utilities Commission, 267 U. S. 359..... 54
Ohio Valley Co. vs. Ben Avon Borough, 253 U. S. 287. 26, 27
Oklahoma Gas Co. vs. Russell, 261 U. S. 290..... 24
Osborn vs. Bank, 9 Wheaton 738.....24, 25
Ottinger vs. Brooklyn Union Co., 272 U. S. 579.....37, 44
Ottinger vs. Consolidated Gas Co., 272 U. S. 577..... 42
Pacific Gas and Electric Co. vs. City and County of San Francisco, 273 Fed. 937..... 46

PAGE

Pacific Gas Co. vs. San Francisco, 265 U. S. 403, 46, 54, 88, 91

Pacific Telephone Co. vs. Kuykendall, 265 U. S. 196... 24

Pacific Telephone & Telegraph Co. vs. Whitcomb, 12 F. (2d) 279..... 47

Patterson vs. Mobile Gas Co., 271 U. S. 131..... 36

Penn. R. R. Co. vs. Public Service Commission, 126 Md. 59 .....22, 63

Plainfield-Union Water Co. vs. Board of Public Utility Commissioners, 30 F. (2d) 846..... 49

Portland Railway Co. vs. Oregon R. R. Commission, 229 U. S. 397.....103, 104

Prendergast vs. New York Telephone Co., 262 U. S. 43 24

Prentis vs. Atlantic Coast Line, 211 U. S. 210.....22, 24

Procter & Gamble vs. United States, 225 U. S. 282.... 22

Public Service Commission vs. Atlanta & W. P. R. Railroad Co., 164 Ga. 822, P. U. R. 1928 B, 136..... 102

Public Service Commission vs. Byron, 153 Md. 464... 22

Public Service Commission vs. N. C. Ry. Co., 122 Md. 355 .....13, 22, 24

Public Service Commission vs. P. B. & W. Railroad Co., 122 Md. 438..... 24

Public Service Commission vs. United Railways Co., 155 Md. 572.....2, 4, 6, 8, 11, 23–24, 26, 27, 29–30, 31, 39 59, 64, 66–68, 69, 70, 73, 74, 79–81, 83, 84–86, 98–99, 103

Public Utility Commissioners vs. Plainfield-Union Water Co., 30 F. (2d) 859..... 49

Puget Sound Traction Co. vs. Reynolds, 244 U. S. 574 100

Queens Borough Gas & Electric Co. vs. Prendergast, 31 F. (2d) 339..... 49

Railroad Commission vs. Duluth Street Railway, 273 U. S. 625.....24, 39

PAGE

Re Los Angeles Ry. Corporation, P. U. R. 1928 D 75.. 64

St. Louis & O'Fallon Ry. Co. vs. United States 22 F. (2d) 980 52

St. Louis & O'Fallon Ry. Co. vs. United States, 279 U. S. 461 .....27, 52, 76-77

San Diego Land and Town Co. vs. National City, 174 U. S. 739..... 70

San Joaquin Co. vs. Stanislaus Co., 233 U. S. 454.... 9

Second Employer's Liability Cases, 223 U. S. 1..... 25

Smith vs. Illinois Bell Telephone Co., 270 U. S. 587... 24

Smyth vs. Ames, 169 U. S. 466.....25, 70–71, 89, 92

Southern Bell Tel. & Tel. Co. vs. Railway Commission of S. C., 5 F. (2d) 77.....37, 38

Southern Pacific Co. vs. Campbell, 230 U. S. 537..... 27

Southwestern Bell Telephone Co. vs. City of Fort Smith, 294 Fed. 102.....36, 38

Southwestern Bell Telephone Co. vs. Public Service Commission, 262 U. S. 276,
19, 25, 36, 39, 46, 70, 87, 89–90, 91, 92

Springfield Gas & Electric Co. vs. Public Service Commission, 10 F. (2d) 252.....45–46

Spring Valley Water Co. vs. City and County of San Francisco, 252 Fed. 979..... 46

State, ex rel Hopkins vs. Southwestern Bell Telephone Co., 115 Kan. 236, P. U. R. 1924 D, 388.....93–94

Truax vs. Corrigan, 257 U. S. 312..... 25

United Gas Co. vs. Railroad Commission, 278 U. S. 300 .....47, 92

United Gas Co. vs. Public Service Commission, 278 U. S. 322 47

United Fuel Gas Co. vs. Railroad Commission, 13 F. (2d) 510 92

PAGE

United Fuel Gas Co. vs. Railroad Commission, 278 U. S. 300 92

United Railways and Electric Co. vs. West, Md. , 145 Atl. 340 ..... 2, 7

United Railways and Electric Co. vs. West, 278 U. S. 567 7

United States vs. Illinois Cent. R. R., 263 U. S. 515..25, 105

United States vs. Ludey, 274 U. S. 295..... 95

Vincennes Water Supply Co. vs. Public Service Commission, 34 F. (2d) 5..... 49

West vs. United Railways and Electric Co., 278 U. S. 567 7

West Palm Beach Water Co. vs. City of West Palm Beach, 35 Rate Research 115..... 51

Willcox vs. Consolidated Gas Co., 212 U. S. 19, 9, 33, 41, 60, 63

Williams vs. Broening, Mayor, 135 Md. 226..... 98

Worcester Electric Light Co. vs. Atwill, P. U. R. 1929 B, 1 48

TEXTS.

Dickinson, Administrative Justice and the Supremacy of Law 27

Edgerton, "Value of the Service as a Factor in Rate Making," 32 Harv. L. Rev. 516..... 70

Encyclopaedia Britannica 63–64, 76

Goddard, Fair Value of Public Utilities, 22 Mich. Law Rev. 777 92

Whitten-Wilcox, Valuation of Public Service Corporations 96

TABLE OF STATUTES CITED.

UNITED STATES:

PAGE

Transportation Act, 1920, Act of Feb. 28, 1920, c. 91, 41 Stat. 456 51

28 U S C A §866, Act of Feb. 13, 1911, c. 47, §2, 36 Stat. 901 12

MARYLAND:

Acts of 1900, Chapter 313 [Public Local Laws, Art. 4, sec. 796] 13, 75, 112–113

Acts of 1918, Chapter 82, section 10.....97, 113–114

Acts of 1927, Chapter 331, [Public Local Laws, Art. 4, sec. 4] 97–98, 114–116

Annotated Code of 1924 (and 1929 Supplement)

Article 23, sec. 353 .....69, 106–107

sec. 385 .....8, 107–109

sec. 387 .....14, 109

sec. 404–409 .....21, 109–112

sec. 404 .....5, 21, 22, 84, 109–110

sec. 405 .....22, 110–111

sec. 406 .....13, 111

sec. 408 .....22, 112

Public Service Commission Law

Section 6 .....69, 106–107

Section 30 .....8, 107–109

Section 31½ 14, 109

Sections 41–47 .....21, 109–112

Section 43 .....5, 21, 22, 84, 109–110

Section 44 .....22, 110–111

Section 44½ 13, 111

Section 46 .....22, 112

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

No. 55.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE,
Appellant,

vs.

HAROLD E. WEST, Chairman, and J. FRANK HARPER and STEUART PURCELL, Members, Constituting the Public Service Commission of Maryland,
Appellees.

No. 64.

HAROLD E. WEST, Chairman, and J. FRANK HARPER and STEUART PURCELL, Members, Constituting the Public Service Commission of Maryland,
Appellants,

vs.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE,
Appellee.

Appeal From, and Cross-Appeal From and Petition for Certiorari to, the Court of Appeals of the State of Maryland.

BRIEF FOR THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, APPELLANT IN No. 55 AND CROSS-APPELLEE AND RESPONDENT IN No. 64.

The opinion of the Court of Appeals of Maryland (on a second appeal) is reported in 145 Atl. 340. This opinion follows and reaffirms the majority opinion on a former appeal, reported in 155 Md. 572, with a concurring opinion by JUDGE ADKINS and dissenting opinions by JUDGE PARKE and CHIEF JUDGE BOND.

The appellant, (cross-appellee and respondent), The United Railways and Electric Company of Baltimore, will be called the Company; the appellees, (cross-appellants and petitioners), The Public Service Commission of Maryland, will be called the Commission.

THE QUESTION.

This case presents no conflict of evidence as to any fact now material.

The principal question presented is, **Whether or not limitation by the Commission of the Company's rates to a return of not more than 6.26 per cent. on the undisputed value of its property is confiscatory**—the uncontradicted evidence showing that since July 1, 1920, the average cost to the Company of *borrowed* money (other than current bank loans) was 7.23 per cent., the lowest 6.6 per cent., the last 7.32 per cent. [R. 1638, 1658; 155 Md. 591, 611; *infra*, 135, 159], and that this experience is quite in line with the general situation of street railways, though not of other business generally. [R. 1145, 1146.] The lower state court (JUDGE ULMAN) and the dissenting judges of the Court of Appeals (JUDGE PARKE and CHIEF JUDGE BOND) answer this question in the affirmative; the majority of the Court of Appeals answer in the negative. From the answer of the majority the Company appeals.

The opposing answers to this question, by the Commission and the majority of the Court of Appeals on the one hand and the lower state court and the dissenting judges on

the other, turn on broader, more far reaching questions, *e. g.*, (1) whether or not the Company has a constitutional right to be permitted to earn any fair return at all except what the Commission sees fit to permit or (2) whether the determination of what return is confiscatory or non-confiscatory is controlled by the repeated decisions of this Court or "can only rest in the judgment of the Commission." These broad issues are drawn in the opposing opinions and conclusions on the same undisputed facts. The Commission professes to consider the opinions of this Court on the question what is a constitutional fair return, but turns this Court's reasoning upside down and reaches what JUDGE ULMAN aptly terms "an inverted conclusion" [R. 75], viz., that the *greater* the risk, *i. e.*, the *greater* the return necessary to attract capital, the *less* the rate of return to which a utility is constitutionally entitled. JUDGE ULMAN, following the opinions of this Court, held the Commission's rates confiscatory and enjoined them. The dissenting judges of the Court of Appeals, likewise following the opinions of this court, are of like opinion.

The majority of the Court of Appeals (otherwise largely following the Commission) does not profess to follow the opinions of this Court on the question of rate of return. The opinion declares, in a spirit of judicial agnosticism, that "while there are cases which hold that such utilities are entitled to a return of six or seven or eight per cent. on the value of their properties, they have no controlling weight, because the decisions are uniformly found to be based upon facts peculiar to the several cases. So in this particular case, in deciding whether the schedule of rates prescribed by the Commission is confiscatory, we must be guided by the facts of this case, and are little aided by what this court or some other court may upon different facts have found to be lawful or confiscatory, fair or unreasonable rates." [R. 1631; 155 Md. 584; *infra*, 127.] Not only is the opposite attitude of this Court in *McCardle vs. Indianapolis Co.*, 272

U. S. 400, 419-420, toward previous cases on rate of return ignored; the Court of Appeals also ignores the explicit statement that in that case "a reasonable rate of return is not less than seven per cent." [272 U. S. 420], actually confuses the opinion of this Court with the dissenting opinion and calls the *negation* of this statement in the dissenting opinion an "interpretation" of this Court's opinion. [R. 1646; 155 Md. 599; *infra,* 144.] The statement in *Dayton-Goose Creek R. Co. vs. United States,* 263 U. S. 456, 486, that "the question of the minimum of a fair percentage on value is shown to vary with the circumstances" [R. 1647; 155 Md. 600; *infra,* 145] is treated as if it overruled everything else said by this Court, before or since, concerning rate of return and as if it justified acceptance of *any* circumstances, however irrelevant, that a Commission chooses to accept in justification of any rate of return it sees fit to allow.

JURISDICTION.

The Company, pursuant to rule 12, paragraph 1, of this Court, has filed its statement as to jurisdiction in No. 55, and this Court has found that probable jurisdiction has been shown [49 S. Ct. 418]. In No. 64 the Commission has filed its statement as to jurisdiction and also its petition for certiorari, the Company has filed an opposing statement as to jurisdiction on cross-appeal or certiorari, and this Court has postponed to the hearing further consideration of the question of jurisdiction and the petition for certiorari. On the questions thus reserved as to jurisdiction in No. 64, the Company refers to its statement already on file herein.

STATEMENT OF THE CASE.

No. 55 is an appeal by the Company from a final decree passed March 20, 1929, affirming dismissal of a supplemental bill to enjoin enforcement of certain orders of the Com-

mission limiting the Company's carfares and claimed by the Company to be confiscatory. The supplemental bill [R. 1681-1689], filed December 12, 1928, in the Circuit Court No. 2 of Baltimore City, an equity court of general jurisdiction, is a bill (*a*) to vacate and set aside, and (*b*) to enjoin enforcement of, an order of the Commission passed February 10, 1928, (as amended by an order passed November 28, 1928) and any prior orders in so far as they limit the Company's rates. The original bill [R. 5], filed March 13, 1928, was a similar bill to vacate and set aside, and enjoin enforcement of, the order of February 10, 1928, and prior rate orders. If (1) a bill invoking the inherent equity jurisdiction to protect property rights by injunction against unauthorized acts of administrative bodies or officers under color of office and (2) a statutory "action" to vacate and set aside Commission orders under section 43 of the Public Service Commission Law [Annotated Code of Maryland, Edition of 1924, Article 23, section 404; *infra*, 109, Appendix A, Maryland statutes] are different remedies, then this supplemental bill (like the original bill) is *both*. If (as the Court of Appeals apparently means to imply) Maryland statutory provisions for review of Commission orders do not constitute a new statutory system of review distinct from the inherent equity jurisdiction, but are merely declaratory and amendatory of the inherent equity jurisdiction and procedure, then this supplemental bill (like the original bill) is a bill invoking the inherent equity jurisdiction as modified by statute (so far as such modifications are constitutionally valid).

On August 1, 1927, the Company applied to the Commission for an increase in fares (then limited by Commission order to 7½ cents token fare or 8 cents cash) to 10 cents flat (except half-fares, school fares and commutation fares). [R. 89.] On September 20, 1927, after hearings, the Commission passed an order denying any "emergency" relief through temporary increased fares, although the uncontra-

dicted evidence demonstrated that then existing fares were confiscatory. [R. 112.] On February 10, 1928, after further hearings but on substantially the same facts, the Commission passed an order denying the Company's application for a flat 10 cent fare and limiting fares to 8⅓ cents (or 9 cents cash), which the Commission estimated would yield the Company a return of not more than 6.26 per cent. on the undisputed value of its property. [R. 57-59.] In its opinion [R. 14] the Commission found (1) that the present fair value of the Company's property is $75,000,000 and (2) that the annual return that can reasonably be expected from the rates so fixed is $4,691,606 and amounts to a return of 6.26 per cent. on the fair value of the property.

In the original bill the Company maintained, *inter alia*, that the Commission's order, and its prior orders, were confiscatory because (1) limitation of the Company's rates to yield not more than 6.26 per cent. is confiscatory and (2) the Commission's annual depreciation allowance was fixed on a wrong basis, cost instead of present value of depreciable property, and was grossly inadequate, and the Commission rates therefore would actually yield less than 6.26 per cent. [R. 5-12]. The Circuit Court (JUDGE ULMAN) held the Commission's orders and rates confiscatory on both of these grounds and on May 11, 1928, passed a final decree so adjudging and enjoining enforcement. [R. 85-86.] On July 16, 1928, the Court of Appeals (*a*) reversed in part the decree of the Circuit Court and held (JUDGE PARKE and CHIEF JUDGE BOND dissenting) a return of 6.26 per cent. not confiscatory and (*b*) remanded the case to the Commission for further proceedings to determine a proper depreciation allowance, based not on cost but on present value, and make any rate changes necessary to yield the same estimated return, *i. e.*, not more than 6.26 per cent. [*Public Service Commission vs. United Railways Company*, 155 Md. 572; R. 1622-1659; *infra*, 117-160]. On November 19, 1928, the Company's appeal (and also the Commission's) from that

decree of the Court of Appeals was dismissed for lack of jurisdiction on the ground that the decree of the Court of Appeals was not a final decree. [*United Railways and Electric Company of Baltimore vs. West,* 278 U. S. 567; *West vs. United Railways and Electric Company of Baltimore,* 278 U. S. 567, 648.]

Pursuant to the opinion of the Court of Appeals the Commission on November 28, 1928, determined the proper annual depreciation allowance to be $755,116 more than its previous allowance and accordingly amended its order of February 10, 1928, by limiting fares to 8¾ cents (or 10 cents cash) instead of 8⅓ cents (or 9 cents cash). [R. 1695-1697.] This increase in fare was allowed to furnish *only* increased revenues equal to the increase in depreciation allowance, *i. e.,* to yield not more than 6.26 per cent. [R. 1695, 1699]. The Company filed its supplemental bill in the Circuit Court to enjoin enforcement of the Commission's order of February 10, 1928, as amended by the order of November 28, 1928, as confiscatory. [R. 1681-1689.] The Circuit Court, in accordance with the opinion of the Court of Appeals, dismissed the supplemental bill; the Court of Appeals, for the reasons given in its opinion on the first appeal, affirmed the decree of January 10, 1929, dismissing the Company's supplemental bill. [*United Railways and Electric Company vs. West,* 145 Atl. 340; R. 1712-1716.]

Value of Property.

No question is presented as to the value of the Company's property. In the lower state court the Company first complained of failure of the Commission to make allowance for additions since January 1, 1924. It developed, however, that the only dispute on this score was principally a matter of dates and that the Commission's counsel construed the Commission's opinion as bringing the valuation down to a date which left little present difference in dollars and cents between the parties and thus made the question

presently unimportant. For all the purposes of this case therefore the undisputed value of the Company's property is $75,000,000. The Court of Appeals says: "The total value of the Company's property, including easements, may be placed at $75,000,000. That was the valuation placed upon it by the Commission in 1924 [*i. e., as of* December 31, 1923], and while there was some dispute as to whether that figure should not be increased to include additions since the valuation, that contention was not stressed in this court, but was treated as a matter of detail which could be adjusted to fit the facts at some future time, so that the figure of $75,000,000 may be treated as the true value of the Company's property for all the purposes of this case." [R. 1631, 155 Md. 584-585, *infra*, 127.]

In the instant case, not only in the Court of Appeals and in the Circuit Court but also before the Commission itself, the Company and the Commission accepted without dispute the valuation (by statute made *prima facie* evidence of value) of the Company's property for rate making purposes by the Commission, after exhaustive investigation, in a valuation case under section 30 of the Public Service Commission Law [Code of 1924, Art. 23, sec. 385, *infra*, 107]. On March 9, 1926, the Commission had ascertained the fair value for rate making purposes of the Company's property on December 31, 1923, to be $77,000,000, including $7,000,000 for easements. [R. 335-337.] The Commission's order making this valuation was confirmed by the Circuit Court of Baltimore City. On appeal to the Court of Appeals the case was remanded for further proceedings on the sole question of the *amount* of the value of easements. [*Miles vs. Public Service Commission*, 151 Md. 337.] The Court of Appeals held that the Company's easements in public streets, as well as in private property, "are an interest in real estate, and whatever value they have as an interest in real estate the company is entitled to have included by the Commission in making up the rate base" [151 Md. 347], but

that the value of such easements for rate making purposes must be determined "on a strictly land value basis" [151 Md. 343], so as not to include "any value attributable to these easements which is dependent upon the earnings of the company." [151 Md. 347.] The Court of Appeals thus flatly rejected the contention that in Maryland easements in public streets (resulting from the exercise of franchises) should not be included as property, in ascertaining the value of property for rate making purposes, because the value of such easements is dependent upon earnings. [151 Md. 339-340. *Cf. Georgia Ry. vs. R. R. Commission,* 262 U. S. 625, 632.] In rejecting the contention the Court ruled (1) that the case of *Consolidated Gas Co. vs. Baltimore City,* 101 Md. 541, definitely settles that such an easement is property, viz., an interest or estate in land, but (2) that the value of such an easement for rate making purposes must be ascertained "on a strictly land value basis" and not on a basis dependent upon earnings. That in Maryland easements in public streets are property interests or estates in land had been definitely settled in tax cases [*Consolidated Gas Company vs. Baltimore City,* 101 Md. 541; *Appeal Tax Court vs. Union R. Co.,* 50 Md. 274] arising *not* under special statutes taxing easements or franchises *eo nomine* [*Metropolitan Ry. Co. vs. New York,* 199 U. S. 1] (which might throw little or no light on *property* questions as such) but under *general* laws taxing *real property.* Such easements in Maryland, like any other property rights recognized by local law, *e. g.,* water rights [*McCardle vs. Indianapolis Co.,* 272 U. S. 400, 413; *San Joaquin Co. vs. Stanislaus Co.,* 233 U. S. 454, 459; *Denver vs. Denver Union Water Co.,* 246 U. S. 178, 192-193] or under special circumstances franchises [*Willcox vs. Consolidated Gas Co.,* 212 U. S. 19, 42-48], are thus part of the property on the value of which a utility is entitled to earn a return. After remand by the Court of Appeals and further proceedings and hearings before the Commission, the

Commission valued the Company's easements "on a strictly land value basis" at $5,000,000 and thus ascertained the fair value for rate making purposes of the Company's property on December 31, 1923, to be $75,000,000. [R. 356-357.] The hearings in the valuation case had been concluded before the Company's application of August 1, 1927, for increased rates, but the Commission's opinion and order in the valuation case were not filed until February 1, 1928.

Revenue from Rates.

Nor is any question presented as to the amount of the annual return to be expected from the rates fixed by the Commission. The Company's position is that *if* these rates yield the return estimated by the Commission, viz., 6.26 per cent., they are confiscatory. If they yield *less* than the Commission estimated, then they are still more confiscatory. In fixing these rates the Commission estimated a smaller continued decrease in passengers (due to continued increase in use of automobiles) than the Company did [R. 30-31, 55], and consequently a larger return from rates. It is not contended that these rates have actually yielded more than the Commission estimated. Indeed the Commission's answer to the supplemental bill contains averments to the contrary [R. 1700-1701]—averments wholly unsupported by findings of the Commission or evidence before the Commission, and therefore properly unnoticed by either the Circuit Court or the Court of Appeals. In respect of these unsupported averments it may be admitted that decline in number of passengers has continued and rates have yielded less than the Commission estimated, (though substantially more than prior lower rates), *i. e.*, less than 6.26 per cent., but the Company would emphatically deny that the principal cause of this continued decline in passengers is increased rates or is other than continued increase in the use of automobiles.

Much cumulative or argumentative testimony about undisputed facts as to revenue and number of passengers may be summed up (so far as material) in a very few controlling facts noted in practically all the opinions, including the Commission's. For several years the total number of passengers has decreased. Nevertheless the peak load—the most expensive service—continues to increase. [R. 712, 1244. Opinion of the Commission, R. 22. Opinion of JUDGE ULMAN, R. 74. Opinion of JUDGE PARKE, R. 1657; 155 Md. 610, *infra*, 157.] This decrease in total number of passengers—with accompanying increase in peak load—is due principally to increased use of automobiles. As JUDGE ULMAN observes, the use of automobiles has *modified* the need for the Company's service in Baltimore but has shown no tendency to supplant it; this modification makes the service *more costly*, but *no less necessary* than ever. [R. 74-75]. As the Court of Appeals says, "while the total number of revenue passengers is decreasing, the peak load of passengers, that is, the greatest number of passengers carried during the 'rush hours' each day has increased, and to accommodate that increasing demand, it has become necessary for the Company to maintain an increased equipment which is to some degree idle during a part of the day." [R. 1638; 155 Md. 590; *infra*, 135.]

Annual Depreciation Allowance.

The Commission seeks review, on cross-appeal and/or certiorari, of certain action on one question, viz., whether on an issue of confiscation *vel non* the Company's annual depreciation allowance should be based on present value or on cost of depreciable property. The same question will doubtless be raised by the Commission as part of the question of confiscation on the Company's appeal.

In this Court this question involves no question of fact. In the original bill the Company maintained that *(a)* value, not cost, is the proper basis for annual depreciation allow-

ance and (b) $2,200,000 would be a proper allowance, and that the Commission's original allowance of $883,544 was (*a*) fixed on a wrong basis, cost instead of value, and (*b*) grossly inadequate in any event. Both the Circuit Court and the Court of Appeals held that the Commission's allowance was fixed on a wrong basis, cost instead of value; this made it unnecessary to decide whether the *amount* of the Commission's allowance was otherwise inadequate. In the supplemental bill, after new evidence before the Commission on this question, the Company raised no question as to the *amount* of the Commission's allowance ($1,638,660, instead of $2,200,000 claimed by the Company) and therefore can not now raise any such question. [R. 1708.]

The only question as to depreciation now presented therefore is the question of law, whether annual depreciation allowance should be based on present value or on cost.

Halethorpe.

In addition to the principal question presented in the instant case the Company's appeal also presents a separate question as to the constitutionality of a provision, in the Commission's order of February 10, 1928, abolishing the second fare to Halethorpe, a community in Baltimore County. The Company maintains that this provision in the Commission's order is unconstitutional and confiscatory. The state courts sustained the provision. The facts (which are not disputed) will be stated in connection with the argument on this point [*infra*, 97-100].

The Record.

The Record in this Court comprises the printed record in the Court of Appeals. [28 USCA, §866.] The record in the Court of Appeals comprised the record in the Circuit Court No. 2 of Baltimore City, except so much of the evi-

dence as was omitted by stipulation. [R. 1615-1619, 1707-1708.] In the Circuit Court No. 2 of Baltimore City the case was heard on the pleadings and the transcript (filed by the Commission pursuant to section 44½ of the Public Service Commission Law [406; *infra,* 111]) of papers and proceedings, including evidence, in the case before the Commission. [R. 85, 1705.] No new evidence was offered. The statement, in the opinion of the Court of Appeals, that "evidence [was] offered by the Commission, the Company and intervening persons interested in the matter" [R. 1624; 155 Md. 577; *infra,* 120] is applicable only to the evidence contained in the transcript of proceedings before the Commission. The evidence in this transcript is evidence in court. [*Public Service Commission vs. N. C. Ry. Co.,* 122 Md. 355, 387-388.]

Section 44½ of the Public Service Commission Law [406; *infra,* 111] provides that before the trial a certified transcript of all the papers and proceedings, including evidence, in the case before the Commission, except such as are omitted by stipulation, shall be filed by the Commission and shall be evidence in like manner as the originals. In the instant case much irrelevant matter was omitted by stipulation. Before the Commission the records in the Company's valuation case and four previous rate cases were offered in evidence [R. 361]. In the transcript these records, except the opinions and orders [R. 115-357] and certain specified parts of the evidence [R. 1306-1347, 1349-1379], were omitted by stipulation.

The records in the Company's valuation case and its four previous rate cases comprise practically its entire rate history and general corporate history from, and even before, the formation of the present corporation by consolidation in 1899. Before the passage of the Public Service Commission Law in 1910 the Company's fares were limited to five cents by a statute [Acts of 1900, Chapter 313, amending Public Local Laws, Art. 4, sec. 796; *infra,* 112], which was

repealed by section 31½ of the Public Service Commission Law [387; *infra,* 109], which in turn left it to the Commission only to fix the time when the repeal should become operative. [*Chenoweth vs. Public Service Commission,* 143 Md. 622, 628-629; *Gregg vs. Public Service Commission,* 121 Md. 1, 30-31.] On October 1, 1918, the Company's fare was increased from five to six cents by a schedule filed with the Commission; this fare was approved by the Commission by an order passed January 7, 1919. [R. 149; 10 P. S. C. Maryland, 39, 65.] By orders passed September 30, 1919, [R. 216; 10 P. S. C. Maryland, 253, 300, 335], December 31, 1919, [R. 244; 10 P. S. C. Maryland, 359, 364-B] and May 26, 1924, [R. 274; 15 P. S. C. Maryland, 102, 120], respectively, the fare was successively changed to six and one-half, seven and seven and one-half cents. The change to seven and one-half cents was accompanied by zone extensions, decreased school fares and other pecuniary burdens, *which almost entirely absorbed the increase.* [Opinion of Commission, February 10, 1928, R. 21.]

The issues now presented seem to require of this Court but little examination of the Record beyond the opinions, of the Commission and in the state courts, in the instant case. Some of the Company's history, from the records in this and previous cases before the Commission, is recited in the opinion of the Court of Appeals. Little of this history seems now material. If however this Court should desire to locate the sources of statements of fact in the opinion of the Court of Appeals, this can be done from a copy of that opinion appended hereto as Appendix B [*infra,* 117-160], in which have been inserted Record references for statements of fact.

ASSIGNMENT OF ERRORS.

The Court of Appeals of Maryland erred:

1. * * * in not reversing the decree of the Circuit Court No. 2 of Baltimore City dismissing the plaintiff's supple-

mental bill of complaint and in not adjudging and decreeing that the rates fixed by Order No. 12639 of the Public Service Commission of Maryland, passed on February 10, 1928, as amended by Order No. 13420 passed on November 28, 1928, and said orders and prior orders limiting rates charged by the plaintiff are unconstitutional and fail to allow to the plaintiff a fair return on the fair value of its property, (*i. e.*, that they deprive the plaintiff of its property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States), and in not vacating and setting aside Order No. 12639, as amended by Order No. 13420, in so far as the same purports to limit the rates of the plaintiff and in not enjoining the defendants (appellees in the Court of Appeals of Maryland, defendants in the Circuit Court No. 2 of Baltimore City and herein called "defendants") against enforcing against the plaintiff the provisions of said Order No. 12639, as amended by Order No. 13420, or any prior orders, in so far as the same limit or purport to limit the rates of fare to be charged by the plaintiff.

2. • • • in not holding that a schedule of fares which permits the plaintiff to earn a return of not more than 6.26 per cent. on the fair value of its property is confiscatory and deprives the plaintiff of its property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States, and in holding that Order No. 12639 of the Public Service Commission of Maryland, as amended by Order No. 13420, and the schedule of rates fixed thereby, are not confiscatory and do not deprive the plaintiff of its property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States.

3. • • • in holding that the question whether fares which permit a return of only 6.26 per cent. are confiscatory "must be approached • • • from the standpoint of the State" and in such approach "factors • • • such as the nature and

necessity of the service, the effect of its continuance or withdrawal, both upon the security holders of the corporation, and upon property values, and the welfare of the people in the territory served by it, the extent to which the State itself is a partner in the enterprise, and the circumstances and conditions under which the [plaintiff] acquired and exercises its franchises and privileges may become of paramount and controlling importance"; thus holding that, under the guise of "approaching" the question what is a fair return and giving weight to various "factors" in the question, the question may actually be ignored and evaded and supplanted by various so-called "factors" which do not properly control or affect the question at all.

4. * * * in holding that the plaintiff's constitutional right to a fair return on the fair value of its property affords no excuse for "increasing [its rates] to a point which will not only be burdensome to the traveling public but will at the same time yield to the [plaintiff] a greater return than it has ever received, and greater than that actually received by others operating in the same field elsewhere under substantially the same conditions" [*i. e.*, under confiscatory rates], and that "whether a given rate is burdensome to the public involves an extremely difficult and troublesome question, the answer to which, except in extreme cases, can only rest in the judgment of the Commission operating upon varying factors each of which is entitled to some weight, but no one of which ordinarily is controlling," thus holding that private property embarked in a utility business does not "rest secure under the constitutional protection which extends * * * to the right to receive just compensation for the service given to the public" [*The Minnesota Rate Cases*, 230 U. S. 352, 434] but that this constitutional protection "can rest only in the judgment of the Commission" and that past confiscation of the plaintiff's property and present confiscation elsewhere legalize perpetual confiscation of the plaintiff's property.

5. * * * in holding that "in determining whether the rates fixed by the Commission are confiscatory we are finally remitted to a few simple realities, such as the past earnings of the Company, [to which the Court of Appeals gives effect precisely the opposite of that given by the Supreme Court of the United States], the returns usually received by other companies engaged in the same business under somewhat similar conditions [*i. e.*, under confiscatory rates], the rates which the [plaintiff] has voluntarily fixed for its service in the past, the decrease in the purchasing power of the dollar, and the effect which other orders of the Commission have had upon the earning power of the [plaintiff]", but that the last two of these factors (regarded by the Court of Appeals as tending to support the plaintiff's position) "were considered fully by the Commission when it fixed the base fare at 7½ cents in 1924, and in view of that finding and of the further fact that the record does not disclose any data sufficiently specific to enable us to say that it was unlawful, we are not inclined to give them any controlling weight now"; thus holding (1) that the question whether rates are confiscatory may be determined from "simple realities" which do not properly affect the question at all and (2) that on this question of confiscation a previous rate order is (unless now specifically proved to have been unlawful) *res judicata* as to facts then considered by the Commission, although (*a*) commission rate orders do not so operate and (*b*) this 1924 rate order could not so operate because the value of the plaintiff's property had not been determined at all and in that case the question of confiscation could not be and was not determined by the Commission and the Commission's own views were expressly tentative, pending determination of the value of the plaintiff's property.

6. * * * in not holding that failure of a State to "provide a fair opportunity for submitting" the question of confiscation "to a judicial tribunal for determination upon its own

independent judgment as to both law and facts" is a deprivation of liberty and property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States, and in holding that the Supreme Court of the United States (in so holding) did not mean what it said but meant precisely the opposite.

7. * * * in confusing the opinion of the Supreme Court in *McCardle vs. Indianapolis Water Works Co.*, 272 U. S. 419, with the dissenting opinion, treating the dissenting opinion as an "interpretation" instead of a negation of the Court's opinion, and thus acting on that case as not deciding what it very clearly did decide, viz., that on the evidence therein and the authority of recent decisions in other cases, rates yielding a return of less than 7 per cent. would be confiscatory.

8. * * * in holding that decisions of the Supreme Court of the United States that certain utilities are entitled to certain returns on the value of their properties "are uniformly found to be based upon facts peculiar to the several cases" and in the instant case the Court of Appeals "is little aided by what" the Supreme Court "may upon different facts have found to be lawful or confiscatory, fair or unreasonable rates."

9. * * * (when holding that Maryland statutes deprive all Maryland courts of the right and power to enjoin enforcement of confiscatory rate orders, thereby deprive the plaintiff of all judicial remedy against the enforcement of confiscatory rate orders, and in lieu of all judicial remedy merely remand the plaintiff for relief against confiscation to the confiscators themselves) in not holding that Maryland statutes, so construed and applied, deprive the plaintiff of its liberty and property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States.

10. * * * (when holding that by reason of Maryland statutes, one confiscatory rate order might be vacated by the Courts, leaving prior orders still more confiscatory in force, but all unconstitutional orders can not be vacated by the Courts, thus holding that the Courts can protect constitutional rights against one unconstitutional order but, when all orders are unconstitutional, can only remand the plaintiff to further action by the confiscators) in not holding that the Maryland statutes, so construed and applied, deprive the plaintiff of its liberty and property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States.

11. * * * (when holding that Maryland statutes not only empower the Public Service Commission to regulate the plaintiff's rates but also deprive the plaintiff of its constitutional right, subject to regulation, to initiate and make rates) in not holding that Maryland statutes, so construed and applied, deprive the plaintiff of its liberty and property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States.

12. * * * (when holding that even the fact that all Commission rates are confiscatory does not "authorize * * * the [plaintiff] to fix" its own rates [subject to the continuing power of regulation] or the Courts to set aside all unconstitutional Commission orders and "leave the question of rates * * * to the discretion of the [plaintiff]" [subject to regulation], but "under the statute the power to [fix rates] is in the Commission alone") in not holding that the Maryland statute, so construed and applied, makes the Commission "the financial manager" of the plaintiff and clothes the Commission "with the general power of management incident to ownership" [*Southwestern Tel. Co. vs. Public Service Commission*, 262 U. S. 276, 289] and thereby deprives the plaintiff of its liberty and property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States.

13. * * * in not reversing the decree of the Circuit Court No. 2 of Baltimore City dismissing the plaintiff's supplemental bill of complaint, and in not adjudging and decreeing that that portion of Order No. 12639 of the Public Service Commission of Maryland which extended the first fare zone on the plaintiff's Halethorpe line to the terminus of said line at Halethorpe is unconstitutional and deprives the plaintiff of its property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States, and in not vacating and setting aside said portion of said order and enjoining the defendants against enforcing the provisions of said order. [R. 1718-1723.]

ARGUMENT.

The Company's position is:

I. Limitation by the Commission of the Company's rates to a return of less than eight per cent. is confiscatory; the Commission's reasons for finding 6.26 per cent. a fair return have no true relation to the fairness of a return.

II. The Company's annual depreciation allowance is properly based on present value, not on cost, of its depreciable property.

III. The abolition of the second fare to Halethorpe is unconstitutional and confiscatory.

Before discussing the principal question and the other two questions just mentioned, two questions concerning judicial review of Commission orders (presented in assignment of errors 6, 9, 10, 11 and 12) may first be considered.

Questions concluded in the Court of Appeals on the first appeal are now reviewable here on appeal from the only decree that was "final" and therefore reviewable here. [*Louisiana Nav. Co. vs. Oyster Commission*, 226 U. S. 99, 101-102.]

Judicial Review of Commission Orders.

The only Maryland statutory provisions governing judicial review of Commission orders are sections 43-47 of the Public Service Commission Law [404-409; *infra,* 109-112]. Whether these provisions (1) constitute a new statutory system of review distinct from the inherent equity jurisdiction or (2) are merely declaratory and amendatory of the inherent equity jurisdiction and procedure, is perhaps not clear from the decisions of the Court of Appeals but is not material in the instant case. If a statutory "action" to vacate and set aside Commission orders under section 43 [404; *infra,* 109] is a different remedy from an ordinary bill for injunction, then the Company by its original bill (and again by its supplemental bill) has expressly invoked *both* remedies. If, on the other hand, the statutory "action" is a mere statutory modification of the ordinary bill for injunction, then the Company has invoked the inherent equity jurisdiction as modified by statute (so far as such modifications are constitutionally valid).

Whether these provisions create a new remedy or only modify an old one, they differ little, except as to the parties who may invoke review and the rights which may be protected thereby, from the inherent equity jurisdiction by injunction, unmodified by statute. Inherent equity jurisdiction to protect property rights by injunction necessarily depends upon the existence of some property right which is independent of and paramount to the rate statute. On the other hand the same statutory authority which confers rate-making powers may also confer the right to invoke judicial review on parties who have no such property rights as would entitle them to invoke equity jurisdiction without statutory authority. By section 43 [404; *infra,* 109] the right to invoke judicial review is conferred broadly on "any person in interest being dissatisfied with any order of the Commission." This includes not only (1) all persons whose property rights may be protected by invoking inher-

ent equity jurisdiction, *e. g.*, any utility whose rates are limited by Commission order [*Public Service Commission vs. N. C. Ry.*, 122 Md. 355; *Penn. R. R. Co. vs. Public Service Commission*, 126 Md. 59; *Havre de Grace Bridge Co. vs. Public Service Commission*, 132 Md. 16], but also (2) other persons who have no such property rights as entitle them to invoke inherent equity jurisdiction, *e. g.*, rate-payers [*Benson vs. Public Service Commission*, 141 Md. 398; *Chenoweth vs. Public Service Commission*, 143 Md. 622; *Miles vs. Public Service Commission*, 151 Md. 337. Cf. *Procter & Gamble vs. United States*, 225 U. S. 282] or taxpayers and a competitor electric company complaining of an order permitting enlargement of a municipal electric light plant [*Public Service Commission vs. Byron*, 153 Md. 464]. In the second class of cases (certainly *not* in the first) the proceeding is "of purely legislative creation" and "the statutory review provided is *sui generis*" [*Public Service Commission vs. Byron*, 153 Md. 464, 469, 474-475]. In the first class of cases these statutory provisions as to review are substantially declaratory of inherent equity jurisdiction and procedure, *e. g.*, a provision as to burden of proof (section 46 [408; *infra*, 112]), and a requirement that if new evidence is introduced it be transmitted to the Commission for consideration (section 44 [405; *infra*, 110])—an application or extension of the comity which should be observed by courts in reviewing the action of rate-making bodies. [*Prentis vs. Atlantic Coast Line*, 211 U. S. 210.] To "vacate and set aside" a rate order under section 43 [404; *infra*, 109] is equivalent to enjoining enforcement; indeed provision in the same section that "no injunction shall issue suspending or staying any order of the commission except * * * upon notice to the commission and after hearing" is a legislative recognition of the inherent equity jurisdiction by injunction.

The Court of Appeals Holds that the Courts can not Give Relief by Injunction Against Confiscation by Commission Orders, but for Relief can only Remand to the Confiscator.

By this amazing ruling even a reversal on the merits in this Court would be legally ineffectual—equivalent to a mere "advisory opinion" to a Maryland legislative agency.

After the decision of the Court of Appeals on the first appeal this ruling operated to continue in force Commission rates for four and a half months after the Court of Appeals had held them confiscatory, until the Commission after further hearings fixed new rates. The Circuit Court by its final decree on the original bill adjudged the Commission's orders and rates confiscatory and enjoined enforcement. The Court of Appeals, remarking that the decree vacated *all* orders of the Commission so far as they purport to limit the Company's rates, held that "even if in fact the eight and one-third cent rate allowed was inadequate to allow the Company a fair return on the value of its property, that fact did not • • • authorize • • • the Company to fix [its rates], for under the statute the power to do that is in the Commission alone." [R. 1625; 155 Md. 578; *infra*, 121.] After this statement are cited three Maryland cases and a statute [relating to dairy containers, evidently an erroneous citation], none of which remotely support this statement. On the contrary in one of the cases cited the Court of Appeals did exactly what it now says the courts can not do, viz., set aside Commission rates, leaving the Company free to initiate its own rates—subject of course to the continuing jurisdiction of the Commission. [*Havre de Grace Bridge Co. vs. Public Service Commission*, 132 Md. 16, 33.] This, the Court of Appeals now says, was not "authorized by anything in the statute, but if the order [of February 10, 1928] was invalid because it was • • • confiscatory • • • it should have been vacated [leaving in effect prior orders still more confiscatory] and the case remanded to the Commission, for further proceedings in accordance

with such guides, rules and standards as the Court might by appropriate order or decree direct." [R. 1626; 155 Md. 579; *infra*, 121.]

This ruling is opposed to the fundamental principle that an unconstitutional law is *not* a law; in this respect a commission order is of no greater potency than an act of Congress [*Marbury vs. Madison*, 1 Cranch 137]. The right to injunctive relief against unconstitutional acts of administrative officials—established in *Osborn vs. Bank*, 9 Wheaton, 738; early suggested by MR. JUSTICE MILLER as "the proper, if not the only mode of judicial relief" against unconstitutional rates [*Chicago, etc., Ry. Co. vs. Minnesota*, 134 U. S. 418, 460]; established in such cases against bitter opposition of state authorities in *Ex parte Young*, 209 U. S. 123—is now nowhere more firmly or more broadly established than in such rate cases [*Prentis vs. Atlantic Coast Line*, 211 U. S. 210, 230; *Oklahoma Gas Co. vs. Russell*, 261 U. S. 290, 293; *Pacific Telephone Co. vs. Kuykendall*, 265 U. S. 196, 203-205; *Railroad Commission vs. Duluth Street Railway*, 273 U. S. 625, 627-628; *Prendergast vs. New York Telephone Co.*, 262 U. S. 43, 49-50; *Smith vs. Illinois Bell Telephone Co.*, 270 U. S. 587, 591-592; *Banton vs. Belt Line Railway*, 268 U. S. 413, 418, 415-417; *Newton vs. Consolidated Gas Co.*, 258 U. S. 165, 175]. Never before has the Court of Appeals suggested doubt as to the power of Maryland Courts to *compel* submission to constitutional rights instead of remanding for relief to the legislature or the administrative officials who have violated such rights. [*Public Service Commission vs. Northern Central Railway Co.*, 122 Md. 355, 358, 392; *Public Service Commission vs. P. B. & W. R. R. Co.*, 122 Md. 438, 444.]

Injunction against enforcement of one or many *unconstitutional* rate orders in no way impairs the Commission's *continuing power* to pass new *lawful* orders. *Subject* to such *regulation* by *lawful* orders, it is still a utility's *right* "to initiate rates and, in this connection, to adopt such

policy of rate making as to it seems wise." [*United States vs. Illinois Central R. R.* 263 U. S. 515, 522.] "It must never be forgotten that while the State may regulate with a view to enforcing reasonable rates and charges, it is not the owner of the property of public utility companies and is not clothed with the general power of management incident to ownership." [*S. W. Tel. Co. vs. Public Service Commission*, 262 U. S. 276, 289. Cf. *Laird vs. B. & O. R. R. Co.*, 121 Md. 179, 190.] The power to fix rates (subject to *lawful* regulation) is part of the fundamental right to earn (through rates) a fair return. This constitutional right is no less deserving of injunctive protection than a statutory right to gamble at a race track when gambling elsewhere is a crime. [*Clark vs. Harford Agr. & Br. Ass.*, 118 Md. 608, 615, citing with approval, on the question of equity jurisdiction by injunction, *Ex parte Young*, 209 U. S. 165; *Osborn vs. Bank*, 9 Wheaton 738; *Smyth vs. Ames*, 169 U. S. 466, and other decisions of this Court.]

The State of Maryland could not by express legislative mandate to its own courts relieve those courts of the duty of protecting the rights of utilities, under the Constitution of the United States, by injunction or any other appropriate remedy available to other litigants, including race track gamblers. [*Second Employers' Liability Cases*, 223 U. S. 1, 55-59; *Truax vs. Corrigan*, 257 U. S. 312, 334-336; *Douglas vs. New Haven R. Co.*, 279 U. S. 377, 387-388.] In fact the State of Maryland has not issued any such mandate to its courts or professed to restrict their general jurisdiction to protect constitutional rights. The ruling of the Court of Appeals is based not on any of the statutory provisions relating directly to judicial review of Commission orders, but on misapprehension as to the substantive rights and duties of utilities and the Commission respectively under the Constitution of the United States and the Public Service Commission Law. Of course this Court can not review the *construction* of the Public Service Commission Law by the

Court of Appeals but will review the *constitutionality* of that law, *as construed* by the Court of Appeals.

The Court of Appeals holds that in *Ohio Valley Co. vs. Ben Avon Borough*, 253 U. S. 287, this Court meant the exact opposite of what it said and did.

In the *Ben Avon* case the Supreme Court of Pennsylvania held that on a question of confiscation the Commission's determination of facts, if supported by substantial evidence, is not reviewable by the courts, and accordingly without considering conflicting evidence sustained an order claimed to be confiscatory. This Court reversed the judgment of the Supreme Court of Pennsylvania for the sole reason that on a question of confiscation the utility is entitled to the Court's "independent judgment as to both law and facts." [*Ohio Valley Co. vs. Ben Avon Borough*, 253 U. S. 287, 289; *Bluefield Co. vs. Public Service Commission*, 262 U. S. 679, 689; *Lehigh Valley R. R. vs. Commissioners*, 278 U. S. 24, 36.] The Court of Appeals now holds that this Court "meant to say" only that where the facts are undisputed or established and the inference to be drawn from them inevitable "the courts will review any conclusion of law predicated upon such facts." [R. 1630; 155 Md. 583; *infra*, 126.] In short, this Court *meant* just what the Supreme Court of Pennsylvania *said* and *did*, and in reversing the Supreme Court of Pennsylvania this Court *said* and *did* the exact opposite of what it *meant*.

In refusing to recognize the difference between "the ascertainment of facts which rest in conflicting evidence" [R. 1630; 155 Md. 583; *infra*, 126] (1) on legislative questions within "the flexible limit of judgment which belongs to the power to fix rates" [*Atlantic Coast Line vs. N. Car. Corp. Commission*, 206 U. S. 1, 26], "committed to such agencies as public service commissions" [R. 1630; 155 Md. 583; *infra*, 126] and (2) on the constitutional question of confiscation, a judicial question which can not be committed to

any administrative agency to the exclusion of judicial review, the Court of Appeals follows Professor Dickinson [R. 1629; 155 Md. 582; *infra*, 125; Dickinson on *Administrative Justice and the Supremacy of Law*]. Professor Dickinson in his lengthy criticism of the *Ben Avon* case cites and quotes previous opinions of this Court without distinguishing statements on constitutional questions from statements on other questions,—a particularly serious error when, citing cases as involving constitutional questions, he quotes statements *not* on the constitutional question but on *other* questions. [*Southern Pacific Co. vs. Campbell*, 230 U. S. 537, 552; *Louisville & Nashville R. Co. vs. Garrett*, 231 U. S. 298, 312-319; Dickinson 179-180.]

This difference between judicial review of constitutional questions and other questions has never been questioned by any member of this Court. In the *Ben Avon* case the dissenting Justices did not question "the rule declared in [that case] which requires in confiscation cases a judicial determination on the weight of the evidence." [Mr. Justice Brandeis in *St. L. & O'Fallon R. Co. vs. United States*, 279 U. S. 461, 538.] The ground of dissent in the *Ben Avon* case was that under the laws of Pennsylvania the utility had the choice of two methods of judicial review, one unrestricted, and therefore, having chosen a limited review, could not complain. This point could not arise in the instant case; the Company has invoked the *only* remedy or remedies available under the laws of Maryland.

In the instant case, since there is no conflict of evidence as to any fact now material, the difference between the rule in the *Ben Avon* case as to judicial review in confiscation cases and the rule applicable in other cases is hardly material. The Court of Appeals, however, in the course of its opinion departs from *both* rules. After stating that "such facts as are relevant to the question before us rest for the most part in records of the Company or the Commission and are not in dispute" [R. 1631; 155 Md. 584; *infra*, 127]

the Court makes some comments, as to facts and evidence, wholly unsupported either by findings of the Commission or by evidence [*infra*, 68-69].

I.

LIMITATION BY THE COMMISSION OF THE COMPANY'S RATES TO A RETURN OF LESS THAN EIGHT PER CENT. IS CONFISCATORY; THE COMMISSION'S REASONS FOR FINDING 6.26 PER CENT. A FAIR RETURN HAVE NO TRUE RELATION TO THE FAIRNESS OF A RETURN.

The Evidence.

As the Commission's opinion indicates, there is no conflict of evidence as to what is a fair rate of return. Mr. Allen G. Hoyt, Vice-President of The National City Company in charge of public utility financing, testified on this subject briefly in the present case, at length in the valuation case and also in a case of Consolidated Gas Electric Light and Power Company of Baltimore. His testimony in the Gas Company case was without objection put in evidence in the present case, the Company offering the whole after People's Counsel had offered a part. [R. 881, 1104.] Mr. James C. Fenhagen, of Robert Garrett & Sons, also testified on this subject in the present case and Mr. Fred S. Burroughs, of Harris, Forbes & Company, in the valuation case. Mr. Nash, of Stone & Webster, and Mr. Downs, of Day & Zimmerman, who were called by the Company to testify concerning allowances for depreciation, were cross-examined about rate of return.

If investors were going to buy or build a property like the Company's they would feel that, in order to induce them to invest their money in the purchase or construction of such a property, the property would have to be expected to earn at least eight per cent. [R. 535, 543, 1143. Gas Company case, R. 1255, 1274, 1275. Valuation case, R. 1312, 1313,

1336-1337.] Taking into consideration other classes of investment with the comparative risks and return thereon—the rate of return generally required to secure proper credit for borrowing money and financing its operation—such a company as this Company should be permitted to earn eight per cent. in order that it might compete successfully for capital with other lines of industry. Eight per cent. would be the lowest rate of return that such a company as this should be permitted to earn on the value of its property in order to make its return equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties. [Gas Company case, R. 1255-1256.] The expected return would have to be at least eight per cent. in order to enlist the necessary capital to construct a utility property, even in the case of a power company or a telephone company. The credit of either a power company or a telephone company is much better than that of street railways. [Valuation case, R. 1312-1313, 1337.]

One of the hazards of utilities, especially street railways—vividly illustrated in the instant case and in the rate increases grudgingly granted in an almost continuous series of four previous rate cases and a valuation case covering a period of nine years—is the difficulty in promptly advancing their rates to overtake increases in cost of operation. [Gas Company case, R. 1258-1259, 1299-1300.] As JUDGE PARKE says, "whatever the risks of [the Company's] urban business, none is greater than its operation under less than a fair rate of return and the uncertainty that this ruinous situation will be surely, timely and adequately relieved. A failure to grant such relief invites disaster; and stinted relief often simply delays a crisis which when it arrives will prove immediately disastrous to the owners of the utility and, in the end, to the interests of the public. The position of the utility is made graver, and the public will not ulti-

mately be benefited by the ruling in the pending case since, in the opinion of the writer of this dissent, the weight of the evidence clearly and satisfactorily establishes that the Commission's limitation of the fair rate of return to 6.26 per centum of the value of its property is confiscatory and, so, unlawful. *Bluefield Company vs. Public Service Commission,* 262 U. S. 679, 694-695." [R. 1657-1658; 155 Md. 610-611; *infra,* 158.]

For some years street railway properties have *not* generally been earning eight per cent. Consequently street railway properties have *not* been and are *not* being built to any extent. [R. 1146-1147, 1148-1149, 1156.] The return earned on street railway properties has *not* been sufficient to induce investors to build street railways, or to buy them on the basis of an expected return of less than eight per cent. The return earned on street railway properties has *not* generally been equal to that generally made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties. Street railway companies have *not* been able to compete successfully for capital with other lines of industry.

In all these respects the condition and the credit of street railway companies is worse than it was before the war—worse even in 1927 than in 1922. [R. 1144, 1155-1156.] The cost to the Company of borrowed money obtained on short term notes in 1922 was 7.27 per cent., in 1927 7.32 per cent.; on long term bonds in 1922 6.75 per cent., on other long term bonds in 1927 6.93 per cent. Since July 1, 1920, the average cost to the Company of borrowed money (other than current bank loans)—more than $18,000,000 in the aggregate—was 7.23 per cent., the lowest 6.6 per cent., the last 7.32 per cent. [R. 1638, 1658; 155 Md. 591, 611; *infra,* 135, 159. Company's Exhibit No. 31, R. 1462.] This experience is quite in line with the general situation of street railways, though not of other business generally. [R. 1145-1146.] As Judge

PARKE says: "It would seem inevitable that a fair return on the property should be more than the cost of money obtained through the sale of bonds and other securities. *McCardle vs. Indianapolis Water Co.*, 272 U. S. 400, 419, 420. The clear and convincing testimony in this case is that a basic rate of 6.26 per centum is not a fair return upon the property used, nor sufficient to enable the utility to maintain its credit or to secure its necessary capital at a reasonable cost." [R. 1659; 155 Md. 612; *infra*, 159.]

The return earned by the Company on its street railway property was for the calendar year 1920 5.436 per cent., for 1921 4.858 per cent., for 1922 5.190 per cent., for 1923 5.326 per cent., for 1924 5.328 per cent., for 1925 5.487 per cent. and for 1926 5.525 per cent. [Company's Exhibit No. 6C; R. 1398.] Proper allowance for depreciation would make all these percentages still lower.

The necessity that a utility—even one with less hazard and better credit than a street railway—be permitted to earn a return of not less than 8 per cent. is illustrated by the Conowingo project, the new dam in the Susquehanna (in Maryland) from which electricity is transmitted to Philadelphia. As an independent undertaking the Conowingo project could not have been financed on its own credit on an expected *maximum* return of either 7 or 8 per cent. [Gas Company case, R. 1259, 1261-1262.] It was financed *not* on a 7 per cent. *return* but on a 7 per cent. *lease* on the ultimate credit of the Philadelphia Electric Company. Financially the Conowingo project is a part of the Philadelphia Electric system, and the Conowingo securities, *both bonds and stocks*, are *underlying securities* of the Philadelphia Electric system, secured by the Philadelphia Electric Company, guarantor of the lease. Of course an additional *part* of an established system can be financed on *borrowed* capital through *preferred* securities, whether bonds, preferred stock or guaranteed stock, on a return of less than 8 per cent. If the additional *part* is not too large in proportion

to the whole and is *properly secured* on the *credit* of the *whole*, then the *part* ought to be financed on the credit of the whole at *considerably less than the average return on the whole*. What the Philadelphia Electric system as a whole, including Conowingo, will be permitted to earn remains to be seen.

The Law.

Although "the question of the minimum of a fair percentage on value is shown to vary with the circumstances" [*Dayton-Goose Creek Ry. vs. United States*, 263 U. S. 456, 486], the decisions of this Court, and its practice of citing not only its own previous decisions but also decisions of lower courts on this question, show that the *relevant* circumstances do not defy rational quest and are in no sense secrets, kept *in gremio* by commissions, beyond judicial ken.

In *Bluefield Co. vs. Public Service Commission*, 262 U. S. 679, this Court discusses what is a fair rate of return in the constitutional sense, *i. e.*, what is non-confiscatory, reviews and distinguishes pre-war cases declining to hold 6 per cent. confiscatory, quotes the *Lincoln Gas Co.* case holding as "a matter of common knowledge * * * that annual returns upon capital and enterprise the world over have materially increased, so that what would have been a proper rate of return for capital invested in gas plants and similar public utilities a few years ago furnishes no safe criterion for the present or for the future" and cites with apparent approval a District Court case holding 8 per cent. a fair *(i. e.*, non-confiscatory) rate of return and a Circuit Court of Appeals case holding 7½ per cent. *not excessive*. The opinion in the *Bluefield* case, which not only contrasts sharply in method but also conflicts directly on specific points with the opinions of the Commission and the Court of Appeals in the instant case, may appropriately be quoted at length:

"The state commission found that the company's net annual income should be approximately $37,000, in order to enable it to earn 8 per cent. for return and depreciation upon the value of its property as fixed by it. Deducting 2 per cent. for depreciation, there remains 6 per cent. on $460,000, amounting to $27,600 for return. This was approved by the state court.

"The company contends that the rate of return is too low and confiscatory. What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.

"In 1909, this Court, in *Willcox vs. Consolidated Gas Co.*, 212 U. S. 19, 48-50, held that the question whether a rate yields such a return as not to be confiscatory depends upon circumstances, locality and risk, and that no proper rate can be established for all cases; and that, under the circumstances of that case 6 per cent. was a fair return on the value of the property employed in supplying gas to the City of New York, and that a rate yielding that return was not confiscatory. In that case the investment was held to be safe, returns certain and risk reduced almost to a minimum—as nearly a

safe and secure investment as could be imagined in regard to any private manufacturing enterprise.

"In 1912, in *Cedar Rapids Gas Light Co. vs. Cedar Rapids,* 223 U. S. 655, 670, this Court declined to reverse the state court where the value of the plant considerably exceeded its cost, and the estimated return was over 6 per cent.

"In 1915, in *Des Moines Gas Co. vs. Des Moines,* 238 U. S. 153, 172, this Court declined to reverse the United States District Court in refusing an injunction upon the conclusion reached that a return of 6 per cent. per annum upon the value would not be confiscatory.

"In 1919, this Court in *Lincoln Gas Co. vs. Lincoln,* 250 U. S. 256, 268, declined on the facts of that case to approve a finding that no rate yielding as much as 6 per cent. on the invested capital could be regarded as confiscatory. Speaking for the Court, MR. JUSTICE PITNEY said:

'It is a matter of common knowledge that, owing principally to the world war, the costs of labor and supplies of every kind have greatly advanced since the ordinance was adopted, and largely since this cause was last heard in the court below. And it is equally well known that annual returns upon capital and enterprise the world over have materially increased, so that what would have been a proper rate of return for capital invested in gas plants and similar public utilities a few years ago furnishes no safe criterion for the present or for the future.'

"In 1921, in *Brush Electric Co. vs. Galveston,* the United States District Court held 8 per cent. a fair rate of return.[4]

"In January, 1923, in *Minneapolis vs. Rand,* the Circuit Court of Appeals of the Eighth Circuit (285 Fed. 818, 830) sustained, as against the attack of the city on the ground that it was excessive, 7½ per cent., found by a special master and approved by the District

[4] This case was affirmed by this Court June 4, 1923, *ante,* 443.

Court as a fair and reasonable return on the capital investment—the value of the property.

"Investors take into account the result of past operations, especially in recent years, when determining the terms upon which they will invest in such an undertaking. Low, uncertain or irregular income makes for low prices for the securities of the utility and higher rates of interest to be demanded by investors. *The fact that the company may not insist as a matter of constitutional right that past losses be made up by rates to be applied in the present and future tends to weaken credit,* and *the fact that the utility is protected against being compelled to serve for confiscatory rates tends to support it.* In this case the record shows that the rate of return has been low through a long period up to the time of the inquiry by the commission here involved. For example, the average rate of return on the total cost of the property from 1895 to 1915, inclusive, was less than 5 per cent.; from 1911 to 1915, inclusive, about 4.4 per cent., without allowance for depreciation. In 1919 the net operating income was approximately $24,700, leaving $15,500, approximately, or 3.4 per cent. on $460,000 fixed by the commission, after deducting 2 per cent. for depreciation. In 1920, the net operating income was approximately $25,465, leaving $16,265 for return, after allowing for depreciation. Under the facts and circumstances indicated by the record, we think that a rate of return of 6 per cent. upon the value of the property is substantially too low to constitute just compensation for the use of the property employed to render the service." (Italics ours.)

Bluefield Co. vs. Public Serv. Comm., 262 U. S., 679, 692-695.

In *Galveston Electric Company vs. Galveston,* 258 U. S. 388, 400, a return of 8 per cent. was assumed as the limit to escape confiscation.

In *Landon vs. Court of Industrial Relations,* 269 Fed. 433, 445, a return of 8 per cent. was held necessary to escape confiscation.

In *Mobile Gas Co. vs. Patterson,* 293 Fed. 208, 221, it was held that rates fixed by the Alabama Public Service Commission were confiscatory and that the plaintiff was entitled to earn 8 per cent. upon the value of its property. [The portion of the decree that adjudged the rates confiscatory and enjoined enforcement was affirmed by this Court. *Patterson vs. Mobile Gas Co.,* 271 U. S. 131.]

In *Southwestern Bell Tel. Co. vs. City of Fort Smith,* 294 Fed. 102, 108, it was held that a fair return would be 8 per cent. This case was affirmed by this Court with the following *per curiam* opinion:

> "Affirmed with costs, upon the authority of *Newton vs. Consolidated Gas Co.,* 258 U. S. 165, 175; *Galveston Electric Co. vs. City of Galveston,* 258 U. S. 388, 395; *State of Missouri ex rel. Southwestern Bell Telephone Co. vs. Public Service Commission of Missouri,* 262 U. S. 276, 287; *Georgia Ry. & Power Co. vs. Railroad Commission of Georgia,* 262 U. S. 625, 631; *Bluefield Water Works & Improvement Co. vs. Public Service Commission of West Virginia,* 262 U. S. 679, 690."
>
> *City of Fort Smith vs. Southwestern Bell Telephone Co.,* 270 U. S. 627.

In *New York Telephone Co. vs. Prendergast,* 300 Fed. 822, the statutory court for southern New York (Circuit Judge Hough and District Judges Knox and Winslow), granting a preliminary injunction against enforcement of a commission order fixing telephone rates claimed to be confiscatory, said:

> "The rate of return on property is a matter of custom and custom is fundamentally opinion.
>
> "Admittedly it is and has been customary to allow as a reasonable rate of return for regulated businesses like this one, 8 per cent. The justification for the custom is the habit of business men, and a departure therefrom is not right because a court or commission prefers a lower rate. Reasons are wanted, and none are set forth in this record. Under such circumstances

there is no presumption of correctness attaching to the 7 per cent. limit. The question always raised in rate cases is this: What rate of return, with due regard to certainty and security, will attract the intelligent investor? It remains to be seen whether a departure from the present customary rate is warranted by modern conditions."

300 Fed. 826.

In *Southern Bell Tel. & Tel. Co. vs. Ry. Comm. of S. C.*, 5 F. (2d) 77, 89, decided by JUDGE COCHRAN, the special master, reviewing most of the cases here cited, found that the complainant's net income should be 8 per cent. upon the value of its property.

In *Brooklyn Union Gas Co. vs. Prendergast,* 7 F. (2d) 628, 672, JUDGE CAMPBELL held that any rate of return lower than 8 per cent. would be confiscatory. The decree in that case was modified and affirmed by this Court, which said: "The decrees [in *King's County Lighting Co. vs. Prendergast,* 7 F. (2d), 192, and *Brooklyn Union Gas Co. vs. Prendergast,* 7 F. (2d) 628] will be modified by excluding therefrom such parts as adjudge the statute invalid for any reason [viz., 650 B. t. u. standard or impairment of contract obligation] except conflict with the Fourteenth Amendment because confiscatory in effect. Thus modified, both are affirmed." [*Ottinger vs. Brooklyn Union Co.,* 272 U. S. 579, 581.]

Each of the eight cases just cited on the question of confiscation—and two others also cited in the above quotation from *Bluefield Co. vs. Public Service Commission,* 262 U. S. 679—were cited on the same question with apparent approval in *McCardle vs. Indianapolis Water Co.,* 272 U. S. 400, 419-420, in which this Court said:

"The Commission, November 28, 1923, in No. 7080, found seven per cent. to be a reasonable rate of return. It stated that was the rate the city's appraiser, Mr. E. W. Bemis, testified to be reasonable. At the trial,

the company introduced testimony supporting higher rates. Mr. Hagenah and Mr. Elmes testified that eight per cent. was a reasonable rate of return. Mr. Metcalf, consulting engineer for the company, supported a rate from 7.5 per cent. to eight per cent. Appellants offered a study by Mr. E. W. Bemis of the rates of yield to investors on certain public utility bonds. He took into account 524 flotations put out at different times between July, 1921, and February, 1924, inclusive. The average yield in the last six months of 1921 was 7.33 per cent., and in February, 1924, 6.11 per cent. The trend was not downward throughout the whole period. It was upward from the last half of 1922 through all of 1923. And he testified that there should be added .4 of one per cent. to cover brokerage. It is obvious that rates of yield on investments in bonds plus brokerage are substantially less than the rate of return required to constitute just compensation for the use of properties in the public service. Bonds rarely constitute the source of all the money required to finance public utilities. And investors insist on higher yields on stock than current rates of interest on bonds. Obviously, the cost of money to finance the whole enterprise is not measured by interest rates plus brokerage on bonds floated for only a part of the investment. The evidence is more than sufficient to sustain the rate of seven per cent. found by the Commission. And recent decisions support a higher rate of return.[4]

"• • • As indicated above, a reasonable rate of return is not less than seven per cent."

In the instant case the majority opinion of the Court of Appeals actually confuses the opinion of this Court in the *Indianapolis* case with the dissenting opinion, ignores the

[4] *Lincoln Gas Co. vs. Lincoln*, 250 U. S. 256, 268; *Galveston Elec. Co. vs. Galveston*, 258 U. S. 388, 400; *Bluefield Co. vs. Pub. Serv. Com.*, 262 U. S. 679, 692 *et seq*; *Landon vs. Court of Industrial Relations*, 269 Fed. 433, 445; *Minneapolis vs. Rand*, 285 Fed. 818, 830; *Mobile Gas Co. vs. Patterson*, 293 Fed. 208, 221; *Southwestern Bell Telephone Co. vs. City of Fort Smith*, 294 Fed. 102, 108; *New York Telephone Co. vs. Prendergast*, 300 Fed. 822, 826; *Southern Bell Tel. & Tel. Co. vs. Railroad Commission*, 5 F. (2d) 77, 89; *Brooklyn Union Gas Co. vs. Prendergast*, 7 F. (2d) 628, 672.

statement last quoted and calls the *negation* of this statement in the dissenting opinion an "interpretation" of this Court's opinion. [R. 1646; 155 Md. 599; *infra*, 144.]

In *Railroad Commission vs. Duluth Street Railway*, 273 U. S. 625, this Court affirmed a decree of the District Court holding confiscatory certain street car fares fixed by the Commission. In that case the Commission found that a return of 7½ per cent. was a reasonable rate of return [273 U. S. 627] and the master and the District Court found the same rate as the limit of confiscation. [*Duluth St. Ry. Co. vs. Railroad and Warehouse Commission of Minnesota*, 4 F. (2d), 543, 550.]

In *Consolidated Gas Co. of New York vs. Prendergast*, 6 F. (2d) 243, the Court, confirming the report of the special master, held that a reasonable (*i. e.*, non-confiscatory) rate of return according to well recognized custom in a regulated business like that of a gas company is not less than 8 per cent. Both the master and the Court in their opinions distinguished, (as this Court afterwards did in the *Indianapolis Water Company* case), between rate of *return on property* and *distributed return on stocks and bonds*—a distinction confused by the Court of Appeals in the instant case [R. 1640; 155 Md. 593; *infra*, 137-138]. The master in his opinion said:

> "The plaintiff is entitled to a fair and reasonable return upon the present value of its property used and useful in the service of its gas consumers. *Bluefield Waterworks Co.* case, supra; *Southwestern Bell Telephone* case, supra, and cases cited. If the investors were going to buy or build a property like that of the complainant, what amount would they feel that the property should earn in order to induce them to invest their money in the purchase or construction of such a property? Taking into consideration other classes of investment in this locality, with the comparative risks and return thereon, the rate of return generally required to secure proper credit for borrowing money

and financing its operations, what should a utility company subject to state regulation be permitted to earn in order that it might compete successfully with other businesses and be on a parity with them?

"There seems to be some misunderstanding on the part of the defendant attorney general as to the meaning of the rate of return referred to by the court. His apparent contention is that it means the amount the plaintiff should pay in the way of interest on bonds and dividends on stock, and on that theory he offered proof as to loans made to and by various corporations and the rate at which they were made, and proofs as to the selling price of various stocks and bonds and the yield thereon. My understanding is that it relates entirely to the return the corporation itself must earn over and above the cost of operation and taxes before it makes any distribution to its stockholders or bondholders. A corporation does not ordinarily expect to pay out all its earnings in the shape of dividends, and, if it is successfully operated, certainly it would not be obliged to pay them out for interest on its obligations. Good business management requires that disbursements of this character should absorb only a portion of its earnings, and some part should be carried to surplus account. It is these earnings, and not the amount disbursed to bond or stockholders, with which the courts are concerned in passing upon the confiscatory character of the rate. Just what this rate should be is not a fixed and established matter, applicable alike to all classes of investment and all sections. Business men discriminate between investments, and rates of interest and return vary. As was said by the statutory court in *New York Telephone Co. vs. Public Service Commission:* 'The rate of return on property is a matter of custom, and custom is fundamentally opinion. Admitting it is and has been customary to allow as a reasonable rate of return for a regulated business like this one 8 per cent., the justification for the custom is the habit of business men, and a departure therefrom is not right because a court or a commission prefers a lower rate. * * * The question always raised in rate cases is this: What rate of return, with due regard to certainty and security, will attract the intelligent investor?'

"On this subject the plaintiff introduced the evidence of two witnesses, Mr. Allison, consulting engineer and advisor of banks and investors in public utility business and management, and Mr. Hoyt, Vice-President in charge of public utility investments of the National City Company of this city. Their familiarity and qualifications for testifying on the subject were proven. Both had large experience with the subject and both testified that the plaintiff should receive a return of 8 per cent. on the present cost to build or buy the property; that this amount would be required, and even more, to interest capital in a public utility such as the plaintiff.

"While, of course, there is no guaranty on the part of the public authorities, or anyone else, that a public utility should be successful, yet if it could earn a proper return on the value of its property in the business, without regulations or statutes preventing them so doing, then such regulations or statutes operate to deprive the company of its property without justification and are confiscatory. The defendants claim that 6 per cent. return would be sufficient in this case to prevent the statute being obnoxious to the constitutional provision, mainly because the Supreme Court, in *Willcox vs. Consolidated,* supra, held in 1906 that such a return was not confiscatory on the facts in that case, although counsel for the Public Service Commission contended that this rate of return was also within the decision in *Newton vs. Consolidated Gas Co.,* 258 U. S. 165, 42 S. Ct. 264, 66 L. ed. 538, and other cases.

"With the decreased value of the dollar and the changing conditions in the business and financial world, due to the World War, the fact that a return of 6 per cent. in 1906 was held not confiscatory is not authority for holding that at the present time and under the present conditions it would still apply. While it is true that in the years past various rates, ranging from 6 per cent. in the first Consolidated Gas case to 8 per cent. in the latest cases, have been used to determine the confiscatory character of the return, the more recent cases, and those decided under present conditions, have uniformly tended to a higher rate. *Bluefield Co. vs. Pub-*

lic Service Commission, supra; *Minneapolis vs. Rand*, (C. C. A.) 285 F. 818, 830; *Galveston Electric Co. vs. Galveston*, 258 U. S. 388, 42 S. Ct. 351, 66 L. ed. 678; *Bronx Gas and Electric Co. vs. Pub. Serv. Comm.*, 190 App. Div. 13, 180 N. Y. S. 38. I find that 8 per cent. is a rate customarily required in the locality to be earned on the present value of the property of a regulated public utility, and that the plaintiff should be permitted to earn at least this amount."

6 F. (2d) 273-274.

The Court in its opinion said:

"It is also the court's conclusion that at the present time a reasonable rate of return, according to well-recognized custom in a regulated business like this, is not less than 8 per cent. The rate of return on the property is not to be confounded with the amount of dividends that a corporation might pay on its capital stock. Indeed, according to all successful business experience, a corporation paying out in dividends all or even the major part of its net earnings is courting speedy disaster. 'The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.' *Bluefield Water Works & Imp. Co. vs. Pub. Serv. Comm. of W. Va.*, 262 U. S. 679, 692, 693, 43 S. Ct. 675, 679 (67 L. ed. 1176)."

6 Fed. (2d) 280-281.

The decree in this case was modified and affirmed by this Court, which said: "The decree of the District Court will be modified by excluding therefrom those parts which declare the Act invalid for any reason [viz., alleged impairment of contract obligations and impossible 650 B. t. u. standard] except that enforcement would result in confiscation. Thus modified, it is affirmed."

Ottinger vs. Consolidated Gas Co., 272 U. S. 577, 579.

In *Alton Water Co. vs. Illinois Commerce Commission,* 279 Fed. 869, in an opinion holding confiscatory a commission order fixing water rates, the Court said:

> "It has been held that no rate of return can be deemed reasonable which is not high enough to attract capital to the form of investment involved in utility properties, such as complainant's. *Lincoln Gas & Electric Co. vs. Lincoln,* 250 U. S. 256, 39 Sup. Ct. 454, 63 L. ed. 968. A return of 8 per cent. upon the fair value has been held to be reasonable."
>
> 279 Fed. 873.

In *Louisiana Water Co. vs. Public Service Commission,* 294 Fed. 954, in holding confiscatory a commission order fixing water rates, the Court said:

> "Moreover, no rate of return can be deemed reasonable which is not high enough to attract capital to the form of investment involved in utility properties, and a return of 8 per cent. upon the fair value of such utility properties has been held to be reasonable. *Alton Water Co. vs. Illinois Commerce Commission* (D. C.) 279 Fed. 869, loc. cit. 873; *City of Toledo vs. Toledo Rys. & Light Co.,* 259 Fed. 450, loc. cit. 455, 170 C. C. A. 426."
>
> 294 Fed. 957.

In *New York Telephone Co. vs. Prendergast,* 11 F. (2d) 162, the statutory court, (CIRCUIT JUDGES ROGERS and MANTON and DISTRICT JUDGE AUGUSTUS N. HAND), referring to the prior decision in *New York Telephone Co. vs. Prendergast,* 300 Fed. 822, [*supra,* 36-37], said:

> "The commission stated that the rates fixed by its orders were intended to yield a net return to plaintiff of only 7 per cent., and this court held this was error; it being customary to allow as a reasonable rate of return for regulated business like this one 8 per cent., unless a departure from that rate should be shown to be warranted."
>
> 11 F. (2d) 163.

In *New York and Queens Gas Co. vs. Prendergast,* 1 F. (2d) 351, 370, (appeal dismissed, 268 U. S. 708), the special master expressed his opinion that under the evidence and the decisions the plaintiff might properly claim a return of 8 per cent. on the present value of its property.

In *King's County Lighting Co. vs. Prendergast,* 7 F. (2d) 192, 218, [modified and affirmed, *Ottinger vs. Brooklyn Union Co.,* 272 U. S. 579, 581, *supra* 37] the statutory court for eastern New York (CIRCUIT JUDGE MANTON and DISTRICT JUDGES CAMPBELL and INCH) in an opinion by JUDGE MANTON held that any rate of return lower than 8 per cent. would be confiscatory.

In *New York & Richmond Gas Co. vs. Prendergast,* 10 F. (2d) 167, decided by the statutory court for eastern New York (CIRCUIT JUDGE MANTON and DISTRICT JUDGES CAMPBELL and INCH), the master in his opinion said:

> "The fair return to which this plaintiff is constitutionally entitled is to be computed on the present value of its used and useful property, over and above all expenses of operation, including the cost of maintenance and taxes. Such return should be such as to yield net earnings sufficient to attract careful and conservative investors, and should be at least equal to the return ordinarily allowed in similar lines of business activity and investment.
>
> "The parties hereto have submitted a number of authorities in which the courts, in various parts of the country, have fixed rates varying considerably in amount. The state and federal courts, in the gas rate cases in this and the adjoining districts, have, however, held that a sufficient and proper rate of return on the property used in this class of enterprise is not less than 8 per cent. of the value of the property used and useful in the manufacture of gas, and I feel it only fit and proper that this company should be placed on a parity with such other companies to the extent of its rate of return.

"I may add that the proofs in this case fully confirm the fact, which is well within the common knowledge of residents of the borough of Richmond, as to the urgent need that this plaintiff gas company shall be permitted to earn at all times an adequate rate of return, to the end that it may be able to attract freely the substantial quantities of new capital which are necessary for its normal growth. The welfare of this company and of the communities which it serves are shown to have been seriously prejudiced, at times, by the inability of the company to charge rates yielding net earnings which induce ready contributions of new capital for additions to plant and extensions of mains and facilities. Curtailment of the company's earnings below an adequate return would be no boon to this Richmond territory.

"For the purpose of this case, I fix 8 per cent. as a moderate and reasonable rate of annual return, if figured upon the present value of the plaintiff's property as hereinbefore found. Whether a larger return should be allowed by the rate-making body, I express no opinion here."

10 F. (2d) 186-187.

On this point the Court in its opinion said:

"In *King's County Light & Gas Co. vs. Prendergast*, supra, we approved a rate of return of not less than 8 per cent. as a reasonable rate of annual return. We think that return on the property of the plaintiff would be a fair return on an investment, and approve the conclusion of the master as to it also."

10 F. (2d) 209.

In *Springfield Gas & Electric Co. vs. Pub. Serv. Comm.*, 10 F. (2d) 252, in an opinion holding confiscatory a commission order fixing gas rates, the Court said:

"The rate of return asked by plaintiff is 8½ per cent. That plaintiff is entitled to such a return as will be reasonably sufficient to insure confidence in the financial soundness of the utility is beyond question. Under the testimony 8 per cent. appears to be a reasonable and fair return. Such return is in like manner sus-

tained under the law. *Bluefield Co. vs. Public Service Comm'n.*, 262 U. S. 679, 43 S. Ct. 675, 67 L. Ed. 1176; *Joplin Gas Co. vs. Public Service Comm'n.* (D. C.) 296 F. 271; *Missouri ex rel. S. W. Telephone Co. vs. Public Service Comm'n.*, 262 U. S. 276, 43 S. Ct. 544, 67 L. Ed. 981, 31 A. L. R. 807; *Alton Water Co. vs. Illinois Commerce Comm'n.* (D. C.) 279 F. 869. There was some testimony, however, that 8½ per cent. would be a fair and proper return."

10 F. (2d) 255.

In *Houston Electric Company vs. City of Houston*, 265 Fed. 360, 365, the master's report, confirmed by the court, held that a fair rate of return would be eight per cent.

In *Pacific Gas Co. vs. San Francisco*, 265 U. S. 403, decided June 2, 1924, the question was whether certain gas rates fixed by ordinances for the fiscal years beginning July 1, 1913, 1914 and 1915 were confiscatory. The master found on the evidence that a return of 7 per cent. was necessary in order to avoid confiscation. The District Judge adhered to a former opinion of his own in another case holding 6 per cent. not confiscatory. [*Pacific G. & E. Co. vs. City and County of San Francisco*, 273 Fed. 937, 943-946; *Spring Valley W. Co. vs. City and County of San Francisco*, 252 Fed. 979, 987-989.] This Court, approving the finding of the master and not the opinion of the District Judge, said:

"We think the evidence supports the finding that a net return of seven per centum was necessary in order to avoid confiscation."

265 U. S. 405.

This decision of this Court that in 1913, 1914 and 1915 a return of less than 7 per cent. was confiscatory is consistent with the recent decisions of lower courts—including the six cited by this Court in the *Indianapolis* case—holding that *now* a return of less than 8 per cent. would be confiscatory.

In *Brooklyn Borough Gas Co. vs. Prendergast* 16 F. (2d) 615, 622, 638, the master and the statutory court for eastern New York (CIRCUIT JUDGE MANTON and DISTRICT JUDGES CAMPBELL and INCH) in an opinion by JUDGE MANTON held the plaintiffs entitled to earn an 8 per cent. return. The Court in its opinion said that such a rate is permissible under the *Indianapolis Water Company* case.

In *United Gas Co. vs. Railroad Commission,* 278 U. S. 300, 312, 319, and *United Gas Co. vs. Public Service Commission,* 278 U. S. 322, 325-326, a reasonable rate of return was found by the lower courts, and assumed by this Court, to be 8 per cent.

In *Idaho Power Company vs. Thompson,* 19 F. (2d) 547, 573-574, the statutory court for Idaho (CIRCUIT JUDGE RUDKIN and DISTRICT JUDGES DIETRICH and CUSHMAN), emphasizing "evidence of the strength and safety of plaintiff's investment," concluded that under the circumstances the element of risk "must here be held to be relatively small" and was "unable to conclude that under such circumstances rates yielding a return of 7 per cent. or over" would be confiscatory. In *Columbus Gas and Fuel Company vs. City of Columbus,* 17 F. (2d) 630, 641, a return of 7.078 per cent. was found to be non-confiscatory.

In *Monroe Gaslight and Fuel Co. vs. Michigan Public Utilities Commission,* 11 F. (2d) 319, 325, the statutory court for eastern Michigan (CIRCUIT JUDGE DENISON and DISTRICT JUDGES TUTTLE and SIMONS) held that under circumstances mentioned in the opinion "and particularly with the declared willingness of the Commission to allow a return of 8 per cent. as this may be brought about by an increased volume of business and by more efficiency" a 7 per cent. return would not be confiscatory.

In *Pacific Telephone and Telegraph Company vs. Whitcomb,* 12 F. (2d) 279, 286-287 [affirmed, *Denney vs. Pacific T. & T. Co.,* 276 U. S. 97], the statutory court for Washington

(CIRCUIT JUDGE RUDKIN and DISTRICT JUDGES NETERER and WEBSTER) overruled exception to the special master's conclusion that a return of less than 7½ per cent. would be confiscatory.

In *Interborough Rapid Transit Co. vs. Gilchrist,* 26 F. (2d) 912, 924 [reversed on other grounds, *Gilchrist vs. Interborough Co.,* 279 U. S. 159, 210], the statutory court for southern New York (CIRCUIT JUDGE MANTON and DISTRICT JUDGES KNOX and BONDY), assumed as settled by the authorities in point that the utility is entitled to a return of eight per cent. to avoid confiscation, and cited in support of this assumption four of the authorities cited above.

In *Cambridge Electric Light Co. vs. Atwill,* 25 F. (2d) 485, 487-488, the statutory court for Massachusetts (CIRCUIT JUDGE BINGHAM and DISTRICT JUDGES MORTON and MORRIS) in an opinion by JUDGE MORTON said they were "not at present satisfied that a return of less than 8 per cent. would *ipso facto* be confiscatory," or that the return that would actually be obtained would be of that character; and "these points should await final hearing." In *Worcester Electric Light Co. vs. Atwill,* P. U. R. 1929 B 1, 82, the master, appointed after a preliminary injunction had been granted by the statutory court for Massachusetts (CIRCUIT JUDGES BINGHAM and JOHNSON and DISTRICT JUDGE LOWELL) [23 F. (2d) 891], held that the evidence sustained 8 per cent. as the rate of return which the plaintiff was entitled to earn, and that this also seems to be in accord with recent decisions.

In *Middlesex Water Co. vs. Board of Public Utility Commissioners,* 10 F. (2d) 519, 529, [appeal dismissed, 275 U. S. 483], decided by the statutory court for New Jersey, (CIRCUIT JUDGE DAVIS and DISTRICT JUDGES RELLSTAB and CLARK), a return of 7½ per cent. was fixed by the Board and adopted by the master.

In *Plainfield-Union Water Co. vs. Board of Public Utility Commissioners,* 30 F. (2d) 846, 856, 858, the master held the plaintiff entitled to a return of 7½ per cent. and the Court said: "Obviously, 7½ per cent. is but a reasonable return upon a utility investment." The Circuit Court of Appeals for the Third Circuit "after a thorough investigation" declared itself "in entire accord on the law and findings of fact with what was done in the court below." [*Board of Public Utility Commissioners vs. Plainfield-Union Water Co.,* 30 F. (2d) 859. Certiorari denied, 279 U. S. 858.]

In *Los Angeles Ry. Corporation vs. Railroad Commission,* 29 F. (2d) 140, 147, [No. 60 in this Court on appeal], the statutory court for southern California (CIRCUIT JUDGE HUNT and DISTRICT JUDGES JAMES and SAWTELLE) included an 8 per cent. return as part of the "total cost of service" to be met by rates.

In *Vincennes Water Supply Co. vs. Public Service Commission,* 34 F. (2d) 5, 9 [No. 197 in this Court on petition for certiorari to the Circuit Court of Appeals for the Seventh Circuit], the parties stipulated that 7 per cent. was a proper return and the Circuit Court of Appeals remarked that "the stipulation is in accord with the decision of the Supreme Court as to what is a proper return upon public utility properties."

In *Queens Borough Gas & Electric Co. vs. Prendergast,* 31 F. (2d) 339, 364, 373, the master found the rate of return to which the plaintiff was entitled to be not less than 8 per cent.; the statutory court for eastern New York (CIRCUIT JUDGE SWAN and DISTRICT JUDGES CAMPBELL and INCH) in an opinion by JUDGE SWAN held the rate in question confiscatory but "without in any sense intimating any disagreement with [the master's] conclusions as to the evidence or the law" found it unnecessary for the court to go into the question of rate of return.

In *Greencastle Water Works Co. vs. Public Service Commission,* 31 F. (2d) 600, 606, the statutory court for Indiana (CIRCUIT JUDGE ALSCHULER and DISTRICT JUDGES BALTZELL and SLICK) in an opinion by JUDGE BALTZELL "upon all the evidence" found that a return of 6½ per cent. would not be confiscatory and enjoined, as confiscatory, rates yielding less. The opinion does not mention any evidence or cite any authority as to whether or not a return of 6½ per cent. would be confiscatory.

In *Louisville Railway Co. vs. City of Louisville,* F. (2d) , decided September 28, 1929, in the district court for western Kentucky, the Court in its opinion said:

> "* * * plaintiff is entitled to a fair and reasonable return measured by the rate of return generally made in this part of the country on other business undertakings which are attended by corresponding risks and uncertainties. This return should be sufficient to assure confidence in the financial stability and soundness of the investment, and should be adequate, under efficient and economical management, to maintain and support its credit and to enable it to raise the money necessary for the proper discharge of its public function. I am satisfied that, measured by this rule and by the evidence in this case, any return less than 8 per cent. would not be fair and reasonable. In this view I think I am supported by the cases of *McCardle vs. Indianapolis Water Company,* 272 U. S. 400; *Lincoln Gas Company vs. Lincoln,* 250 U. S. 256; *Galveston Electric Company vs. Galveston,* 258 U. S. 388; *Bluefield Company vs. Public Service Commission,* 262 U. S. 679, and numerous cases from the lower federal courts."

In *New York Telephone Co. vs. Prendergast,* in a report filed March 11, 1929, in the federal court for southern New York, the master finds that the return the plaintiff is entitled to earn is 8 per cent., that the decisions hold an 8 per cent. return the usual and customary rate to be allowed public utilities in this part of the country, and that the evidence is sufficient to sustain a finding that an 8 per cent.

return should be allowed the plaintiff [35 Rate Research 29, 31-32].

In *West Palm Beach Water Co. vs. City of West Palm Beach,* in a report filed June 12, 1929, in the federal court for southern Florida, the master finds that the return the plaintiff is entitled to be allowed, fully established by the evidence, is 8 per cent. [35 Rate Research 115, 126-127].

In *Chesapeake & Potomac Telephone Co. vs. Whitman,* 3 F. (2d) 938, 953-954, the statutory court for Maryland (CIRCUIT JUDGE ROSE and DISTRICT JUDGES GRONER and SOPER) in an opinion by JUDGE ROSE held non-confiscatory a return of 6 per cent. *plus* a part of substantial payments (charged to operating expenses) under contract to the American Telephone & Telegraph Company for financial assistance, which enabled the plaintiff to secure capital at lower rates than if it stood alone and without which the court "might well doubt" the sufficiency of a 6 per cent. return. The opinion is expressly based on facts, peculiar to that case, which (correctly or not) were deemed sufficient to distinguish the case from all previous reported cases—and therefore are sufficient to distinguish it from the instant case. Evidently the courts generally have so regarded that case, which has never been cited on the question of rate of return by this Court or any federal court.

It has *not* been held that limitation of steam railroad rates to a *maximum* return of 6 per cent. or less than 8 per cent. is non-confiscatory. The "recapture" provisions of Transportation Act, 1920, do *not* limit the return of every railroad or any particular railroad to *5½ per cent., or 6 per cent., or 8 per cent., or any maximum at all.* The act tentatively fixed the *average* return for *all* railroads *as a whole* at 5½ per cent., plus ½ per cent. in the discretion of the commission. Any rates inevitably yield the *strong* railroads a return much *larger,* and the *weak* railroads a return much *smaller,* than the *average* return. The recapture pro-

visions require the strong railroads to surrender only half of the excess of their *actual* return over the fixed *average*, thus leaving them the fixed average *plus half* of the excess of their actual return over the average. Of course *each* individual railroad has its redress in the courts, if in practice the fixed *average* return *plus half* of the *actual* excess falls short of its constitutional right. In fact in the only cases decided by this Court involving the recapture provisions the *actual* return to the railroad *after* paying over one-half of the excess earnings was not less than 8 per cent.

In *Dayton-Goose Creek Ry. vs. United States,* 263 U. S. 456, 486, this Court said:

> "The act fixed the fair return for the years here involved, 1920 and 1921, at five and a half per cent. and the Commission exercises its discretion to add one-half a per cent. * * * Here we are relieved from considering the line between a fair return and confiscation, because under the provisions of the act and the reports made by the appellant the return which it will receive after paying one-half the excess to the Commission will be about 8 per cent. on the reported value."

In *St. Louis & O'Fallon Ry. Co. vs. United States,* 22 F. (2d) 980, 984, [reversed 279 U. S. 461, 487], the actual return *after* recapture, computed on the highest disputed valuation, *i. e.*, the railroad's own, was for 1920 6.97 per cent., for 1921 8.71 per cent., for 1922 8.29 per cent. and for 1923 8.43 per cent., *i. e.*, a return of *more than 8 per cent.* for the entire four-year period in question. Even this recapture was held invalid by this Court, because beyond the statutory authority granted the Commission. [*St. L. & O'Fallon Ry. Co. vs. United States,* 279 U. S. 461, 488.] In short, the act does *not* authorize recapture of all income in excess of the constitutional minimum necessary to escape confiscation; on the contrary it secures, to railroads generally, *more* than their minimum constitutional right. [*Dayton-Goose Creek Ry. vs. United States,* 263 U. S. 456, 479-480.]

Throughout the United States weak railroads are paralleled by and in competition with strong railroads. Legally the weak railroads are not, economically they are, limited to the same rates as their strong competitors. The same rate may be confiscatory as to a weak railroad but not as to its strong competitor. [*Missouri Rate Cases,* 230 U. S. 474, 508-509.] The constitution protects a railroad against *legal* limitation of its own rates but not against *legal* limitation of a competitor's rates which *economically* limit its own. [*Dayton-Goose Creek Ry. vs. United States,* 263 U. S. 456, 481; *Aetna Insurance Co. vs. Hyde,* 275 U. S. 440, 446-447.] If the rates of *each* railroad were *legally* limited to a constitutional minimum return, only the strong railroads would actually receive such a return; the rates and returns of the weak railroads would be economically limited so that their *actual* returns would be much less than the constitutional *permitted* return. Congress recognized and avoided this by allowing the strong railroads *more* than their minimum constitutional right, thereby assuring the weak railroads *more* than they actually would get as the economic result of limiting their strong competitors to the constitutional minimum. The act itself declares that "because it is impossible to establish uniform rates upon competitive traffic which will adequately sustain all the carriers needed to do the business, without giving some of them a net income in excess of a fair return, any carrier receiving such excess shall hold it" in the manner prescribed [263 U. S. 476].

In view of the national character of steam railroads' business, this *affirmative* protection by Congressional legislation, and the long standing, justified by the event, of railroad securities as the highest grade of American investments except Government securities, the Company's position in the instant case would not be affected even if it were held that a fair *minimum* return for steam railroads, *i. e.,* a return necessary to attract capital, is materially less than a

fair return for street railways and may be materially less than 8 per cent.

The authorities above cited (believed to include all reported federal court cases on rate of return in recent years) show that, although "the question of the minimum of a fair percentage on value" varies "with the circumstances" [*Dayton-Goose Creek Ry. vs. United States,* 263 U. S. 456, 486], in most cases a fair return has been held to be not less than 8 per cent. In all cases in this Court or in the lower federal courts, it is recognized that the question is a *judicial* question, to be decided on the law and the evidence, not controlled by the fiat of a commission. In this Court the decision on this question may be reviewed and reversed not only on appeal from a lower federal court [*Pacific Gas Co. vs. San Francisco,* 265 U. S. 403] but also on writ of error to a state court. [*Bluefield Co. vs. Public Service Commission,* 262 U. S. 679.] On writ of error to a state court, this Court will set aside findings of state courts and commissions contrary to the uncontradicted evidence or otherwise unsupported by evidence. [*Ohio Utilities Company vs. Public Utilities Commission of Ohio,* 267 U. S. 359.]

The Commission.

The Commission—and the Court of Appeals—justify a return limited to 6.26 per cent. on grounds directly contrary to the decisions of this Court and the constitutional principles established by this Court.

The Commission in its opinion of February 10, 1928, after finding that the annual return that can reasonably be expected from the rates fixed by its order amounts to 6.26 per cent., concluded:

> "If riding should fall off any further this rate of return [6.26 per cent.] would be further decreased.
>
> "The Commission believes that this rate of fare will be fair to the public and will yield a fair rate of return

to the Company, making due allowance for possible decrease in riding. This conclusion, in so far as the Company is concerned, is supported by the fact that few, if any, street railway companies are earning more than the rate of return which it is estimated will be produced by this fare.

"The Commission will therefore deny the Company's application for a ten-cent flat fare and will fix a rate of fare at eight and one-third cents on a token basis or nine cents cash." [R. 55-56.]

In reaching this conclusion the Commission, referring to cases above cited [*supra*, 32-46] in which utilities were held entitled, in order to escape confiscation, to earn a return of at least 8 per cent., said (italics ours):

"Company's counsel also state (Brief, page 88) that:

'In not one of those cases in which a utility was held entitled to earn a return of at least 8 per cent. were the risks of the utility business as great as they now are in the street railway business. If those utilities are entitled to a return of at least 8 per cent., this Company is entitled to more than 8 per cent.'

"This, in the Commission's opinion, by no means follows. It may be pointed out that in not a single case where a utility was held to be entitled to an 8 per cent. return, was that utility a street railway company. As far as this Commission knows, there is not one in the country that is earning as much as a 7 per cent. return on the present day value of its property. The Commission cannot ignore the significance of that situation. Street railway companies have no reason to be more modest in asserting their rights than gas and electric and water companies, which, on the facts in their particular cases, have been held entitled to a return of 8 per cent. There must have been some reason, other than modesty or regard for the public's purse or even contracts establishing rates of fare, that has kept them from appealing for their rights in court, if their properties were being confiscated by a return of less than 8 per cent., in fact, by a return of less than 6 per cent. Perhaps the consideration that has kept them out of

court has been the belief that they could not earn 8 per cent. at rates which the public would pay, and that the effort to get an 8 per cent. return, if allowed by the courts, would, through the operation of the law of diminishing returns, result in their earning even less than they are earning now."

"It is true, as counsel states, that in not one of those cases in which a utility was held entitled to earn a return of 8 per cent., were the risks of the utility business as great as they now are in the street railway business. And it is, we believe, because of those very risks that capital is reluctant to invest in street railways, and that no new street railways are being built in the United States today. Witnesses for the Company (Messrs. Hoyt, Burroughs and Fenhagen) testified than an 8 per cent. return would be necessary to get capital to invest in street railway properties, but none of them showed that any street railway company did or could earn that rate. As a matter of fact, none of them do. Therefore, according to the testimony, it is not possible to get capital, not only for the United Railways, but for any street railway in the country. Yet we do know that capital *is* forthcoming at fair rates of interest for well managed street railway companies which are giving adequate service to the public at reasonable rates, even if those rates do not yield 8 per cent. It may be true, however, that capital could not be obtained for the establishment of a complete, new railway system anywhere in this country.

"SHOULD RISK INCREASE RATE OF RETURN

"We do not agree with counsel for the Company in their theory, that, because of the risks, 'if those utilities are entitled to a return of at least 8 per cent., this Company is entitled to more than 8 per cent.' This Commission feels that the risk of the business, which is largely due to automobile competition, is in fact the element which limits the rate of return which the Company can earn, rather than justifies an increasing return, in the same manner that it limits riding.

"The risk which the railway industry now faces is the same risk that confronts any business or industry

when new methods of doing a familiar thing are developed. Regulation cannot protect regulated industries from that kind of risk. Sail was compelled to give way to steam on the seas. Even if sail had been protected by regulation it could not have been saved by increasing rates or by being granted a fixed return on the value of ships. Canals gave way to the steam railroads. Increased rates could not have saved them. The package freight business of the steam railroads is being taken by motor trucks, and the short distance passenger is being carried in increasing number by buses. The parcel post has taken the small package business from the express companies. The jobbing business in Baltimore is today giving way to direct dealing between manufacturer and retailer. The little electric railway which, in the middle eighties, ran from Huntington Avenue and Oak Street to Hampden and Woodberry, indicated the end of the horse cars and the substitution of the trolley car, not only in Baltimore but all over the United States.

"Now the street car is encountering the competition of the private automobile. That competition cannot be checked by any means now available. The street railway is still a necessary means of transportation and is the only means of handling passengers in large numbers at present available. But it certainly cannot follow that, because it is faced with a serious risk to its future, the risk itself entitles it to a greater return on the value of its property than are those utilities which have no such risk.

"So long as the Company is performing a necessary service it is entitled to be compensated for that service by an amount which will cover its costs, and will yield a fair profit on the use of its property. And this Commission will authorize the Company to collect a rate which will yield that cost and profit, so long as it is reasonable and no more than the Commission feels the service is worth to the public. But the Company cannot depend upon regulation and increasing rates to save it from ultimate disaster, if, because of the automobile, or any other new agency of transportation, its service becomes obsolete, and the use of that service is

> confined to comparatively few people. The Company has been protected from jitney competition and its rates have heretofore been raised to meet increasing costs of rendering service, but there is a limit beyond which the Commission cannot go in permitting higher rates to meet, not increasing costs of doing business, but failure to earn a sufficient return, due to the falling off of business." [R. 37-39.]

The Commission says "that capital *is* forthcoming at fair rates of interest for well managed street railway companies which are giving adequate service to the public at reasonable rates, even if those rates do not yield 8 per cent." The Commission does *not* say—for the facts and all the evidence are directly contrary [*supra*, 28-32]—that capital is forthcoming for street railway companies or any other utilities earning only 6.26 per cent. *on equal terms* with the capital already invested, or even that *borrowed* capital is forthcoming for investment in street railways at rates of interest such as to cost the companies not more than 6.26 per cent. When the cost of borrowed money, *i. e.*, new capital invested not on equal terms with the old but with priority over the old, exceeds or even equals the return permitted to be earned on the property as a whole, then part of the capital already invested is confiscated by the imposed necessity of giving the new capital both the priority in claim and also a larger return than the old—or even an equal return with it.

The Commission's conclusion and the grounds of its conclusion as to what constitutes a fair return for the Company are revolutionary. Street railway property is put in a class by itself, subject to all the risks of property embarked in strictly private business and all the restrictions of property used in public service without the constitutional protection afforded to either. This classification of street railways apart from all other utilities, as JUDGE ULMAN says, "is somewhat strange; even more strange is the Commission's suggestion that this regulated public industry should be

placed in a class with jobbers of merchandise." [R. 74.] No less strange is the Court of Appeals' comparison with the ice business:

> "It is a matter of general knowledge that the manufacture and sale of machines for artificial refrigeration, and the manufacture of ice in homes, has had a serious effect on the artificial and natural ice business as formerly conducted. But assuming that the ice business is a public utility and its rates subject to regulation, it would be manifestly unreasonable to allow an ice company to charge to its patrons the losses it had suffered from the inroads of competitors, by requiring them to pay rates high enough to absorb these losses." [R. 1643; 155 Md. 596-597; *infra*, 141.]

If the price of ice were now regulated by law and kept *down* to *cost*, (and readiness to serve were compulsory), then it would be manifestly unreasonable—and confiscatory —*not* to allow the price to be increased and kept *up* to *cost*, when through decrease in volume of business or otherwise cost is increased. Prices, like the price of ice, *not* regulated by law but by competition, are automatically kept *up*, as well as *down*, to cost.

The Commission and the Court of Appeals simply refuse to recognize the constitutional basis of all rate regulation—cost of service—when cost of service is *increased*. Commissions lawfully may, and universally do, *reduce* rates when cost of service is decreased through changed use of service or otherwise. When the tide turns and expense is increased, rates likewise must be increased. Commissions can not define "rate regulation" as a synonym for "rate reduction."

"Falling off of business" of the Company has occurred *not* because "its service is becoming obsolete" or "the use of that service is confined to comparatively few people." Its service has never been more necessary or used by more people. The "falling off of business" is due to the same

causes as increase in business of other utilities, viz., *changed uses* of service, made possible by the unparalleled prosperity, or extravagance, or both, of the American people. For precisely the same reasons, the public makes new and increased uses of electricity, new and increased uses of automobiles and consequently diminished use of street cars. Everybody, however, must use street cars; the more pleasure riding and other unnecessary riding diminish, the more necessary are the other uses and the more indispensable the street car to carry the *still growing* peak loads [*supra*, 11] that the automobile and the streets themselves could not otherwise accommodate at all. Rates for electricity *automatically* decrease as the customer makes a changed use which is less costly, and increase as he makes a more costly use. The public must likewise pay the cost of the *changed use* it makes of the Company's service. "Increasing costs of doing business" "due to the falling off of business," *i. e.*, to *changed use* of service, must be paid for like all other increased costs.

The novel conclusion that *risk limits*, instead of *increasing*, the amount that constitutes a *fair* return is, as JUDGE ULMAN says, "an inverted conclusion." [R. 75.] *Risk*, in a broad sense, is the economic measure of the difference between the returns expected (and necessary to attract capital) on different investments. The greater the risk the greater the expected (and necessary) return. In the first New York gas case (decided in January, 1909) the decision that a 6 per cent. return was non-confiscatory was based directly on **smallness of risk.** This Court said, "In an investment in a gas company, such as complainant's, the risk is reduced almost to a minimum," and remarked that "the court below regarded it as the most favorably situated gas business in America." [*Willcox vs. Consolidated Gas Company*, 212 U. S. 19, 49.]

The Commission confuses *legal* limitation of *rates* with *economic* limitation of *business.* The *only* limitation from which the Company asked relief of the Commission was limitation of *rates* by the Commission's own *fiat.* The Company did not ask the Commission for "protection" from automobile competition—or from any *risk* "which *limits the rate of return* which the Company can earn, *in the same manner that it limits riding.*" Riding is not limited by commission *fiat;* the return which the Company can earn is not limited by automobile competition. Nor is "increasing rates" *now limited by the Commission* a form of "protection" or "salvation" by "regulation"; it is only self-preservation by lifting a yoke imposed by "regulation" and by preventing "regulation" from crushing what it says it cannot "protect." During and after the war, while street railways and other utilities were suffering confiscation through *legal* limitation of *rates* and commission procrastination in approving increases, "sail," which was *not* "protected by regulation," earned enormous returns "on the seas" "by increasing rates" and by *not* being *limited* to "a fixed return on the value of ships." Though increased rates could not save canals, nobody suggested approaching "ultimate disaster" as an excuse for confiscating their property through *legal* rate limitation *before* the arrival of *economic* disaster. If every Baltimore jobber but one should become bankrupt, no commission could by rate limitation force the sole survivor to follow his fellows.

The Commission virtually asserts a *prescriptive right* on the part of the public *to confiscate the properties of all the street railway companies in the United States* for delay in "appealing for their rights in court." The street railway industry (the Commission says) is not like other utilities, which are *permitted* to earn and *do* earn 8 per cent. In the street railway industry this simply "isn't done." Street railway properties *actually* earn only 6 per cent. or less.

Ergo, this Company shall not be *permitted* to earn more than 6 per cent.

As to this assertion by the Commission, as JUDGE ULMAN tersely says, "it is sufficient to cite *Bluefield Company vs. Public Service Commission,* 262 U. S. 679, 694-695." [R. 76.] Instead of establishing a prescriptive right to confiscate the utility's property, the very fact that for a long time the utility's return has been small is a reason why the utility should not be prevented *by law* from earning a much larger return. The fact that the Bluefield Company for *twenty-five years* had earned *less* than *five* per cent. was one of the reasons why a rate which prevented it from earning *more* than *six* per cent. was held confiscatory.

> "Investors take into account the result of past operations, especially in recent years, when determining the terms upon which they will invest in such an undertaking. Low, uncertain or irregular income makes for low prices for the securities of the utility and higher rates of interest to be demanded by investors. The fact that the company may not insist as a matter of constitutional right that past losses be made up by rates to be applied in the present and future tends to weaken credit, and the fact that the utility is protected against being compelled to serve for confiscatory rates tends to support it. In this case the record shows that the rate of return has been low through a long period up to the time of the inquiry by the commission here involved. For example, the average rate of return on the total cost of the property from 1895 to 1915, inclusive, was less than 5 per cent.; from 1911 to 1915, inclusive, about 4.4 per cent., without allowance for depreciation. In 1915 the net operating income was approximately $24,700, leaving $15,500, approximately, or 3.4 per cent. on $460,000 fixed by the commission, after deducting 2 per cent. for depreciation. In 1920, the net operating income was approximately $25,465, leaving $16,265 for return, after allowing for depreciation. Under the facts and circumstances indicated by the record, we think that a rate of return of 6 per cent.

upon the value of the property is substantially too low to constitute just compensation for the use of the property employed to render the service."

Bluefield Co. vs. Pub. Serv. Comm., 262 U. S. 679, 694-695.

That a utility's *right* to a fair return may be lost by forbearance—or, if you will, delay—in asserting it, is the opposite of established doctrine. By enjoying inadequate rates too long the public cannot acquire a right to continue such rates still longer. On the contrary, under the decisions of this Court, the question is, not whether the utility has delayed too long before attacking a confiscatory rate but whether it has waited long enough to make it reasonably clear that the rate will actually prove to be confiscatory. [*Knoxville vs. Water Co.*, 212 U. S. 1; *Willcox vs. Consolidated Gas Co.*, 212 U. S. 19; *Penn. R. R. Co. vs. Public Service Commission*, 126 Md. 59, 79-81.] It is not for the public to complain that the Company did not assert its rights sooner.

The Commission would do violence to orderly procedure as well as to substantive rights. *To try one carfare case it would be necessary for a commission to try every possible carfare case in the United States.* There are difficulties enough in the comparison of *fares* in other cities. Without looking further than the Commission's opinion it is evident that the Company's peculiar burdens of (1) a city park tax of 9 per cent. on gross receipts [R. 28-29] and (2) unprofitable zone extensions to new city limits which include much rural territory [R. 22-23] would make a flat 10 cent fare in Baltimore small in comparison with the flat 10 cent fare that has been in force in Boston for years. In 1918 the Baltimore city limits, which formerly contained 32.19 square miles, were extended so as to contain 95.32 square miles, including 11.30 square miles of water. This trebling of area added only about 100,000 to the population, which (thus increased) was 733,826 in 1920. [Encyclopaedia Britan-

nica, Thirteenth Edition, Volume I, 322.] The Boston city limits contain only forty-eight square miles with a population of 748,060 in 1920, and are surrounded by a metropolitan area, much of it densely populated, which (including the city of Boston) contains 409½ square miles with a population of 1,658,936 in 1920 [Encyclopaedia Britannica, Thirteenth Edition, Volume I, 413]. This metropolitan area is *not* covered by a single 10 cent carfare.

What *rates* of *return* are actually earned in other cities, why the return in each case is not more or less than it actually is, why the utility does not ask or get higher rates—are questions which require the same inquiry *concerning each city* as has been made concerning Baltimore. Such an inquiry would lead into all the complex local conditions, including complexities of the legal status of the street railway company or companies in each locality. For instance, what the Commission says about alleged rates of return of other companies is based on a tabulation of wholesale hearsay [People's Counsel Exhibit No. 25, R. 1517], which is set out in the opinion of the Court of Appeals [R. 1635; 155 Md. 588; *infra,* 131] and which includes a return of 3.06 per cent. on $54,000,000 in Los Angeles; in a case now pending before this Court [No. 60] the statutory court for southern California [*Los Angeles Ry. Corporation vs. Railroad Commission,* 29 F. (2d) 140, 147] and the California Commission found a return of 4.9 per cent. on $42,000,000 and the California Commission found an average return of 6.6 per cent. for the last seven years [*Re Los Angeles Ry. Corporation,* P. U. R. 1928 D, 75, 80]. If, however, such hearsay were reliable, it would be irrelevant. This Company's constitutional rights are not lost by forbearance or delay in asserting them; *a fortiori* they would not be lost by delay of other street railway companies in asserting their rights.

As this Court judicially knows, the principal reason why street railway companies have not all asserted their constitutional rights is that many have none to assert. In

many cities rates have been irrevocably fixed by contract and can not be changed without the consent of the local contracting parties. [*Detroit vs. Detroit Citizens St. Ry. Co.*, 184 U. S. 368, 382; *Cleveland vs. Cleveland City Ry. Co.*, 194 U. S. 517, 536; *Minneapolis vs. Street Railway Co.*, 215 U. S. 417, 434; *Detroit United Ry. vs. Michigan*, 242 U. S. 238; *Detroit United Ry. vs. Detroit*, 248 U. S. 429, 437; *Columbus Ry. & Power Co. vs. Columbus*, 249 U. S. 399; *Georgia Ry. Co. vs. Decatur*, 262 U. S. 432, 439. Cf. *Gilchrist vs. Interborough Company*, 279 U. S. 159.] A sufficient reason why the Company did not assert its constitutional rights earlier is that in four previous rate cases it had sought *prompt*—and received meagre—relief (urgently needed) without a valuation of its property, and its valuation case was not decided until 1926 and (on one point) was reheard a few weeks before the instant case was instituted.

The Commission in its opinion, quoting this Court in the *Bluefield Company* case [*supra*, 33] said:

> "The Commission feels that the Company 'is entitled to such rates as will permit it to earn a return on the value of the property * * * equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties.' The only comparable business undertakings 'attended by corresponding risks and uncertainties' that this Commission knows of are those of other street railway companies in the East, and it does not know of such a company which is earning a return of much, if any, more than 6 per cent., no matter what the rate of fare." [R. 36.]

The Commission's comparison confuses present investments with past investments already lost or confiscated. The return which must be permitted in order to avoid confiscation is measured by the return "generally being made *at the same time*" on new investments, not on past investments already wholly or partly lost or confiscated. In the

New York gas cases eight or more gas companies engaged at the same time, in the same immediate locality, in the same business undertaking, attended by the same risks and uncertainties, were suffering confiscation in the same way, earning substantially the same inadequate confiscatory return. [*Newton vs. Consolidated Gas Company,* 259 U. S. 101, 258 U. S. 165.] The Commission would say that the business undertakings most comparable to each company were the other seven, and as none of the eight were earning a fair return, none of the eight were entitled to a fair return or to any relief. When the New York gas cases were instituted gas companies were suffering confiscation about as generally as street railways now are.

The Court of Appeals, in developing the Commission's text that a fair rate of return "varies with the circumstances," ignores or misunderstands this Court's other decisions [*supra,* 32-39, 46] and elaborates *irrelevant* "circumstances" as justifying a return clearly confiscatory. Thus, at the outset of the discussion, "there is a third approach, in which the question [whether a return of 6.26 per cent. is confiscatory] is viewed from the standpoint of the State, in which case, factors which from the standpoint of the public or the corporation have varying weights, such as the nature and necessity of the service, the effect of its continuance or withdrawal, both upon the security holders of the corporation, and upon property values, and the welfare of the people in the territory served by it, the extent to which the State itself is a partner in the enterprise, and the circumstances and conditions under which the Company acquired and exercised its franchises and privileges may become of paramount and controlling importance, and in our judgment the question must be approached from that direction." [R. 1627; 155 Md. 580; *infra,* 122-123.] " * * * while there are cases which hold that such utilities are entitled to a return of six or seven or eight per cent. on the value of their properties, they have no controlling weight, because

the decisions are uniformly found to be based upon facts peculiar to the several cases. So in this particular case, in deciding whether the schedule of rates prescribed by the Commission is confiscatory, we must be guided by the facts of this case, and are little aided by what this court or some other court may upon different facts have found to be lawful or confiscatory, fair or unreasonable rates." [R. 1631; 155 Md. 584; *infra,* 127.]

Past confiscation and confiscation elsewhere are "circumstances" reiterated in various forms as justifying present confiscation. " * * * when the Company contends that since conditions, which neither it nor any one else can control, increase the expense of its service, that it should be permitted not only to transfer that entire burden to that part of the public who must of necessity use its lines, but to also increase its net earnings beyond a point they have ever reached, it ignores the very patent fact, that if the State withdrew from it the protection from competition by other public service companies offering the same service, which it now enjoys, its very existence would be threatened. The mere fact therefore that increasing automobile competition has made it more expensive for the Company to serve those who do use its lines, while it justifies increasing its rates to a point which will absorb the increased expense, affords no excuse for still further increasing them to a point which will not only be burdensome to the traveling public but will at the same time yield to the Company a greater return than it has ever received, and greater than that usually received by others operating in the same field elsewhere under substantially the same conditions." [R. 1642-1643; 155 Md. 595-596; *infra,* 140.] " * * * in determining whether the rates fixed by the Commission are confiscatory we are finally remitted to a few simple realities, such as the past earnings of the Company, the returns usually received by other companies engaged in the same business in other fields under somewhat similar conditions, the rates which

the Company has voluntarily fixed for its service in the past, the decrease in the purchasing power of the dollar, and the effect which other orders of the Commission have had upon the earning power of the Company." [R. 1644; 155 Md. 597; *infra,* 142.]

Some alleged "circumstances" are not only irrelevant but also contrary to the uncontradicted evidence and indeed mutually contradictory. On the uncontradicted evidence that the Company's cost of *borrowed* money has averaged 7.23 per cent. and this experience is quite in line with the general situation of street railways [*supra,* 30], the Company's position that not less than 8 per cent. is a fair return is inaccurately referred to as a "contention • • • that an eight per cent. return is necessary to enable the Company to borrow money at reasonable rates, and that the fact that it is limited to a rate schedule which will yield a return of only 6.26 per cent. puts it at a disadvantage as a borrower and weakens its credit." [R. 1640; 155 Md. 593; *infra,* 138.] The Court of Appeals says "the evidence fails to support that contention," and characterizes the wholly uncontradicted testimony (inaccurately called "testimony pro and con") [*supra,* 28-32], *not* questioned by the Commission, as "subjective," "highly conjectural," "speculative" and "interested," though of "conceded usefulness" [R. 1640-1641; 155 Md. 593-594; *infra,* 138], *because* (1) "it is quite as reasonable to assume that the fact that the ratio of the Company's funded debt to the value of its property is, as the Commission found, approximately 90%, affects its credit, as the fact that it can only earn 6.26[%] on the value of its property" and (2) "the market price of its securities indicates continued public confidence in its stability, as well as in its ability to liquidate its obligations, when and as they accrue" [R. 1641; 155 Md. 594; *infra,* 139]. In short, (1) credit is affected by ratio of funded debt to property and (2) credit is *not* affected at

all. These contradictory reasons are *both* unsupported by evidence.

The Company's cost of borrowed money is *not* due to ratio of funded debt to value of property. "Funded debt" includes approximately $14,000,000 of income bonds [R. 1632; 155 Md. 585; *infra,* 128] (without fixed maturity) junior in obligation and lien to its other mortgage bonds and junior in *obligation* to unsecured notes—financially equivalent to and actually substituted for former preferred stock. The mortgage bonds [R. 1632; 155 Md. 585; *infra,* 128] are only 63.2 per cent. of $75,000,000, the value of the property. Prices of the *senior* mortgage bonds [R. 1638; 155 Md. 591; *infra,* 135] are not affected by whether *junior* securities are income bonds or preferred stock. Relative prices of the mortgage bonds and unsecured notes [R. 1638; 155 Md. 591; *infra,* 135] show the same is true of unsecured notes.

VALUE OF SERVICE TO THE CUSTOMER.

On August 1, 1927, when the instant case was instituted by the Company's application to the Commission for increased fares, facts already established beyond dispute in the four previous rate cases and the valuation case had demonstrated that the Company's rates were, and for some years had been, confiscatory. Before the Commission People's Counsel [Public Service Commission Law, section 6. 353; *infra,* 106] and other opponents of the Company, unable to dispute the facts that constitute confiscation, resorted, not from choice but by elimination, to the contention that rates cannot exceed what the service is worth to the customer, even though they may fail to yield a fair return. The Company fully met this contention (as far as so vague a contention can be met) on the facts as well as the law. The Commission's opinion shows the absence of facts or evidence to make the contention applicable to the instant case. Nevertheless in the state courts People's Counsel, as counsel *for* the Commission, renewed

contentions, as to the facts, already rejected *by* the Commission. JUDGE ULMAN in the Circuit Court and CHIEF JUDGE BOND and JUDGE PARKE in the Court of Appeals expressly hold the contention as to value of service unsupported by evidence and contrary to the facts. The majority opinion of the Court of Appeals also finds it unsupported by evidence; but draws the extraordinary conclusion, not that the contention therefore fails, but that the matter "can only rest in the judgment of the Commission." Thus proved confiscation can be justified by a contention which, without supporting evidence, "can only rest in the judgment of the Commission."

The Law.

May rates ever be limited to less than a fair return, when higher rates would *not* be unproductive? This question, of academic interest, is presented but need *not* be decided in the instant case. A writer cited in MR. JUSTICE BRANDEIS' dissenting opinion in *Southwestern Bell Telephone Co. vs. Public Service Commission,* 262 U. S. 276, 301, discusses the question on principle, reviews the authorities at length and answers in the negative. [Henry W. Edgerton, "Value of the Service as a Factor in Rate Making," 32 Harvard Law Review 516, 520-534.]

MR. JUSTICE BRANDEIS in the same dissenting opinion says:

> " • • • the Federal Constitution guarantees to the utility the opportunity to earn a fair return."[2]
>
> *S. W. Tel. Co. vs. Public Service Commission,* 262 U. S. 276, 290.

In *Smyth vs. Ames,* 169 U. S. 466, 547, this Court said:

"[2] Except that rates may, in no event, be prohibitive, exorbitant, or unduly burdensome to the public. *Covington & Lexington Turnpike Road Co. vs. Sandford,* 164 U. S. 578, 596; *Smyth vs. Ames,* 169 U. S. 466, 544; *San Diego Land & Town Co. vs. National City,* 174 U. S. 739, 757; *Minnesota Rate Cases,* 230 U. S. 352, 454; MR. JUSTICE MILLER in *Chicago, Milwaukee & St. Paul Ry. Co. vs. Minnesota,* 134 U. S. 418, 459."

"What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

Do these two statements in *Smyth vs. Ames* conflict and does the second override the first? In MR. JUSTICE BRANDEIS' footnote are "exorbitant" and "unduly burdensome" broader than "prohibitive" in the sense of "unproductive?" In *New England Divisions Case,* 261 U. S. 184, 191-192, this Court, by MR. JUSTICE BRANDEIS, evidently used the expression "unduly burdensome" as substantially equivalent to "prohibitive" in that sense.

Assuming, however, (for sake of argument only), that the above questions may *all* be answered in the affirmative, the scope of the doctrine invoked is at most exceedingly limited. How *exceptional* must be the circumstances under which a rate (*not* unproductive) may exceed "the value of the service to the customer" without yielding more than a fair return, is indicated (1) by the substance and *form* of MR. JUSTICE BRANDEIS' *footnote* and (2) by the *fact* that *no such exceptional case has ever been decided as such by this Court* (or apparently any other court). None of the five cases cited in MR. JUSTICE BRANDEIS' footnote was such a case; in *Covington, etc., Turnpike Co. vs. Sandford,* 164 U. S. 578, quoted by the Court of Appeals, the rates in question were actually held unconstitutional—though there was no valuation of property. In *Darnell vs. Edwards,* 244 U. S. 564, 570, (cited by counsel in the instant case), the decision was based on failure of proof of confiscation.

Service worth having is normally worth *at least* what it costs, including a fair return. Exceptions (if any) must be *proved.*

"If in such a case there exists any practice, or what may be taken to be (broadly speaking) a standard of

> rates with respect to that traffic, in the light of which it is insisted that the rate should still be regarded as reasonable, that should be made to appear."

Northern Pacific Ry. vs. North Dakota, 236 U. S. 585, 599.

> " * * * if in any case it could be said that there existed other criteria by reference to which the rate could still be supported as a reasonable one for the transportation in question, it would be necessary to cause this to appear."

Norfolk & Western Ry. vs. West Virginia, 236 U. S. 605, 609.

Assuming also, for sake of argument, that courts of equity will not help a utility erect a "spite fence" of rates that clearly will not benefit the utility [*Donham vs. Public Service Commission,* 232 Mass. 309, P. U. R. 1919 C, 880, 890, 893], again the *fact* that a rate would be unproductive must be clearly *proved.* The question is ordinarily one of management. A commission's duty is to protect the public by preventing a utility from charging more than is reasonable, not to protect the utility by preventing it from charging more than it can collect. In the *Donham* case there was some *apparently* substantial evidence, including shrinkage of fruits of previous fare increases from $2,791,000 anticipated to $1,099,783 actual, to support the Commission in *tentatively* disapproving, *for two or four months,* part of a proposed further increase as likely to prove unproductive. The event, however, failed to justify the Commission's tentative order; fares were further increased, some to ten cents flat. [In Everett, Malden and Woburn. R. 684, 1122.] The *Donham* case, limited in scope as it is, apparently stands alone in sustaining even a *tentative* confiscatory rate.

The Court of Appeals so expands MR. JUSTICE BRANDEIS' footnote that the exception becomes the rule. The constitutional guaranty of "the opportunity to earn a fair return" evaporates into an exception, "in *extreme* cases," to

a new doctrine which is so "indefinite and vague" as to be practically not susceptible of proof and which, without supporting evidence, "can only rest in the judgment of the Commission." This new doctrine, therefore, is susceptible of universal application "except in extreme cases." In respect to the question whether rates limiting the Company to a return of 6.26 per cent are confiscatory, (the Court of Appeals says), the Commission's contention is that, whether the Commission rates are fair to the Company or not, "no higher rate should be allowed because the Company is only entitled to collect from the public the value of the service it renders. * * * Manifestly the proposition * * * of the Commission is too indefinite and vague to be of much aid in settling the question before us." [R. 1639, 1630; 155 Md. 591, 592, 583; *infra,* 136.] "Another factor suggested is that a decrease in the volume of traffic indicates that the rates are burdensome, and there is some force in that suggestion, * * *." [R. 1643-1644; 155 Md. 597; *infra,* 141.] By this test all rates are burdensome since they unquestionably decrease the number of passengers who would be willing to ride free. "Whether a given rate is burdensome to the public, involves the question of the value of the service, and presents an extremely difficult and troublesome question, the answer to which, *except in extreme cases,* can only rest in the judgment of the Commission operating upon varying factors each of which is entitled to some weight, but no one of which ordinarily is controlling." (Italics ours.) [R. 1643; 155 Md. 596; *infra,* 140.]

The Facts.

Before the Commission the Company's opponents rested this unsubstantial legal structure on assertions of fact, presented in various forms but in substance reducible to two—or two phases of the same assertion—(1) that a ten-cent fare would not increase revenue but would so decrease riding as to offset the increase in fare and any saving in

expense through decreased business, and (2) that ten cents is more than a ride is worth. In the state courts counsel enriched the vocabulary of the case by adding (3) that street railway service is not necessary to the people of Baltimore but is *moribund.* This third assertion is denied in terms by JUDGE ULMAN [R. 74-75] and by JUDGE PARKE and CHIEF JUDGE BOND [R. 1657; 155 Md. 610; *infra,* 158], and in substance by the majority opinion of the Court of Appeals. [R. 1641; 155 Md. 594.] All three assertions are not only unsupported by evidence but contrary to the Commission's findings.

The fact that for years *billions* of flat ten-cent car fares actually have been and are being paid in Boston and twenty-nine cities smaller than Baltimore [R. 680-681, 1121] is conclusive evidence that ten cents is *not* more than a ride is worth. The Record abounds in other uncontradicted evidence to the same effect—including the testimony of Dr. Jacob H. Hollander, Professor of Economics at Johns Hopkins University, which JUDGE ULMAN regards as "most persuasive." [R. 79, 82.] The fact is, *a ten-cent fare will now give the Company's customer more for his money than the pre-war five-cent fare gave him.*

The five-cent fare was not new in 1913; on the contrary, even then increasing prices, wages and expenses and enlarged service had made it *unreasonably low.* [*O'Brien vs. Board of Public Utility Commissioners,* 92 N. J. L. 44, P. U. R. 1919 B, 865, 870.] The five-cent fare was older than this Company; it had its origin in an early day of low expenses, due to low prices and still lower wages and standards of living. Thirty years ago prices were about one-third less than in 1913. [R. 1170.] Practically all customers then were "short riders." Five cents was the fare for a single "short ride" without a transfer. Formation of the Company by consolidation in 1899 made free transfers universal. The five-cent fare with free transfers was

immediately adopted by the legislature. [Acts of 1900, Chapter 313; *infra*, 112.]

During these thirty years, not only prices generally, but especially wages, have greatly increased. This increase in wages is an increase on the one hand in the Company's expenses and on the other hand in the customer's ability to pay. Since 1913, the Company's wages and operating expenses [Company's Exhibit No. 29, R. 1460], and also wages generally and consequently the purchasing capacity of its customers, have more than doubled. [See testimony of Dr. Hollander, R. 1162, 1177, 1193-1194.] The growth of population and the movement to the suburbs has steadily increased the number and proportion of passengers who are "long riders"; extension of all zones to the new city limits has greatly increased the distance "long riders" are carried for a single fare.

"Value of service to the customer," as well as cost to the Company, has been greatly increased by *changed use* of the service. Formerly the *exclusive* means of transportation for practically *all*, the street car is still a *necessary* and *vital* service for *all*, though *exclusive* for almost *none*. The Company's peak burden continues to increase [*supra*, 11] but its gross volume of business decreases. The number of passengers increases but the number of rides decreases. This is due to the *choice* and ability of the *public* to substitute the more expensive automobile for pleasure and use the street car for necessity. This makes the Company's service more costly to the Company but even *more necessary* to the customer, though still far less expensive than the automobile.

The *value* to the *customer* of this more costly street car service and the customer's *capacity* to *pay* for it are alike demonstrated by the very *demand* for *automobiles* which has made this service necessary and by the capacity to pay which has made this demand possible. The universality of

the automobile is striking evidence of American capacity to pay—whether comparison be made with pre-war America or post-war Europe. On January 1, 1926, there was one motor vehicle to every 5.7 persons in the United States. [Encyclopaedia Britannica, 13th Edition, Volume II, 972.] In 1924 there were 17,726,507 motor vehicles in the United States; in 1912, 1,007,882. At the end of 1924 there were 17,878,000, of which 15,597,000 were passenger cars; in Great Britain, there were 625,000 passenger cars. [*Ibid.*, 973.] In proportion to population there were thus more than *ten times* as many passenger cars in the United States as in Great Britain, though more in Great Britain than in any European country. In 1909 there were in proportion to population apparently about as many in Great Britain as in the United States. [Encyclopaedia Britannica, 11th Edition, Volume XVIII, 919, 920.] In Maryland the number of automobiles has increased from 203,040 in 1924 to 280,000 in 1927. [Company's Exhibit No. 11, R. 1406.] In 1926 the people of Baltimore and vicinity paid *more* for *gasoline* alone than for carfares. [Company's Exhibit No. 21, R. 1421-1423.]

In short, the greater part of the entire population (considered as families, not as individuals) *owns* automobiles; to a greater or less extent *everybody uses* them. A suggestion that the people of Baltimore cannot, or will not, pay ten cents for a necessary and vital service that the automobile cannot furnish at all and could not in any event furnish as cheaply, is preposterous.

Recent statements by Mr. Justice Brandeis concerning water rates, (in contrasting local utility rates with steam railroad freight rates), are also applicable to street car fares: "Rail rates are sometimes held illegal because the exaction is greater than the value of the service to the shipper. There is in fact no corresponding limitation upon water rates. The charge is so small, as compared with the

inconvenience which would be suffered in doing without the service, that the worth to the water taker could rarely be doubted." [*St. L. & O'Fallon R. Co. vs. U. S.*, 279 U. S. 461, 536-537.]

On the subject of "value of service to the customer" the facts, as found by the Commission, are stated in its opinion as follows:

> "The Commission believes that today the falling off in riding is due, not to the amount of the fare, but in part to the slump in business which has been felt in all parts of the country and which continues, and in still larger part to the more general use of the automobile. Automobile competition promises to be greater in 1928 than it was in 1927. The country is now witnessing the most active automobile-selling campaign that the industry has ever known. If it be true, as counsel for the Company state (Brief, page 6), that the people of Baltimore paid more for gasoline in 1926 than they paid for carfares, they will probably continue to pay more in 1928.
>
> "RAILWAY SERVICE A NECESSITY.
>
> "That the service rendered by the Company is a necessary and vital service to the people of Baltimore, is indicated by the fact that the demand upon the system during morning and evening rush hours is almost greater than the Company can meet. Time was when the service was used for pleasure. That day has gone. The motor car has largely taken the place of the street car for pleasure riding. The street cars are used only by those who find them necessary or convenient to get to and from places of employment, or for other trips about the city. The service to the people for such trips is almost indispensable. It would be practically impossible for all the people who use the street cars to reach their places of business or employment, and return to their homes, by any other means of transportation now available. And if the service is necessary to them they cannot expect to be transported for less than the cost of transporting them, plus a fair return for the use of

the agency of transportation. Even at somewhat increased cost it still would be the *cheapest* form of transportation the people could get.

"That the extension of the railway system into the suburbs has resulted in the development of the sections which the lines serve is beyond question. Even in these days of almost universal use of the automobile, property values, except perhaps in that part of the City as it existed prior to the annexation of 1888, are dependent largely upon street railway transportation. Withdrawal or material curtailment of service would be felt immediately in the lowering of real estate values, for there is no transportation agency which could give so comprehensive a service at such low cost.

"Moreover, the development of property and the creation of higher values along the outlying lines of the Company often have been largely at the *expense* of the Company. While creating increased values in land by the extension of its lines and service, thus benefiting immediately the property owner (and the City and County by increasing the taxable basis), the Company has no way of sharing in the increased values it creates until the time comes when there is sufficient development in new territory to produce enough traffic to make the operation of the lines compensatory. Until that time is reached, the Company is compelled to give service to new territory at a loss. This is not the case with gas, electric or telephone companies, for as lines of such companies are extended into new or sparsely settled sections, those receiving and benefiting by their service are required to pay part of the cost of building the extensions, being reimbursed as new customers come on the lines. Many of the Company's lines which extend into the suburbs are still operated at a loss.

"Much has been said about the loss of the short rider and this is often attributed to the price of the car ride. This may be true in some cases, but it does not appear to be so with a great many. To the extent that the short rider has been lost, this loss is due, it seems to the Commission, not so much to the cost of the ride but to the length of the time the ride itself takes. This is due to

the congestion in the streets, caused by the automobile which not only cuts into the revenues of the Company but slows up the operation of the street cars, so that an ordinarily vigorous person frequently can walk through the congested business section in less time than he can make the journey on a street car. With automobiles parked on each side of a street all traffic is forced on the car tracks, slowing up the cars and making street car operation more costly, for the slower the cars run, the more expensive it is to operate them.

"One reason for the Company's plight today is the fact that following annexation in 1918, the city zones on the street car system were extended to the new city line, this line for nearly the entire distance around the City having been extended about two miles. Annexation, while a desirable thing for the City, did not benefit the Railways Company in the slightest degree. Indeed, it imposed additional obligations upon it, and when extensions of fare zones were made it caused extensive loss of revenue which had to be made up through rate increases. In fact, taking all things into consideration, including the cost of giving the service, the extension of lines and fare zones, the greater transfer privileges, the auxiliary bus lines and the like, the Commission believes that street car riders as a whole today receive relatively much more for the fare they pay than they ever received for a five-cent fare." [R. 21-23.]

The Commission also found (and acted on the finding) that "an increase in fares does not result in any marked decrease in riding." [R. 31.]

The Court of Appeals says, " • • • there is little likelihood that it [the Company] will cease to be a highly productive property not only useful but essential to the city's welfare and the public convenience, • • • ." [R. 1641; 155 Md. 594; *infra*, 139.]

CHIEF JUDGE BOND in his dissenting opinion says:

"Another and different situation would be presented if it could be found as a fact that this sort of service

> cannot get the fair return because the service would not be worth so much to users; but I do not see the foundation for that finding in this case. The evidence given on the point goes only so far as to predict that a fare of ten cents would keep away two per cent. of the present users. And, beyond that testimony, if the full fair return requires a fare of so much, ten cents, comparison of that amount with prices generally paid for other services, bus fares, for instance, or fares of steam or interurban electric railways for similar mileage, or prices paid for cheap commodities and entertainments, seems to me to render it impossible to say that it is more than street railway transportation for an average of some miles is worth to riders." [R. 1655; 155 Md. 613; *infra,* 155.]

The majority opinion of the Court of Appeals, though it draws an extraordinary conclusion from the absence of evidence, nevertheless does make clear the absence of evidence that ten cents is more than a ride is worth. Indeed the very fact that such a contention is *not* supported by evidence and apparently is *not* susceptible of proof is made the basis for the strange conclusion that such a contention, without proof, "can only rest in the judgment of the Commission." "Manifestly the proposition [that ten cents is more than a ride is worth] * * * is too indefinite and vague to be of much aid in settling the question before us [whether rates limiting the Company to a return of 6.26 per cent. are confiscatory]. [R. 1639; 155 Md. 592; *infra,* 136.] "Nor is there any rule by which we may precisely determine what is the actual value to the public of such service as that which the Company sells." [R. 1640; 155 Md. 593; *infra,* 137.] "Another factor suggested is that a decrease in the volume of traffic indicates that the rates are burdensome, and there is some force in that suggestion, but the difficulty in this case lies in attributing the decline to the increase of fares. So far as the facts go, it may be due either to that or to the increasing use of the automobile. Whether it is due to one

or the other is a matter of unguided conjecture." [R. 1643-1644; 155 Md. 597; *infra,* 141.]

The Court of Appeals actually shows that a ten-cent fare would give the Company's customers no less for their money than the pre-war five-cent fare gave them:

> "It may be assumed that the base fare prior to the formation of the Commission was reasonable because up to that time no complaint had been made of it by the Company and in 1900 it was fixed by an act of the Legislature, which has never been challenged. The fare then was five cents, which would be approximately equal to 8⅓ cents today, when the decreased purchasing value of the dollar is considered, and if that were all the question would be free from difficulty, for if 5 cents was fair then the equivalent of the value which five cents had then should be fair now. But there are other factors which affect it, such as the extension of the city fare zone so as to embrace all the new territory brought into the city by the annexation of 1918, the effect of which was to relieve a part of the public of the burden of an extra fare, possibly at the expense of the Company and certainly of the remaining part of the public, and also the fact that certain of the operating expenses of the company such as the cost of labor increased in a ratio greater than that in which the purchasing power of the dollar declined, for although speaking generally the dollar now will purchase perhaps sixty per cent. of what it would in 1913 it will not purchase as much as fifty per cent. of the labor which the Company could have bought with it then." [R. 1644-1645; 155 Md. 597-598; *infra,* 142-143.]

The Court, however, immediately after stating these conclusions, repudiates them thus:

> "But these factors were considered fully by the Commission when it fixed the base fare at 7½ cents in 1924, and in view of that finding and of the further fact that the record does not disclose any data sufficiently specific to enable us to say that it was unlawful, we are not inclined to give them any controlling weight now, * * *." [R. 1645; 155 Md. 598; *infra,* 143.]

These are indeed remarkable reasons. "The record does not disclose any data sufficiently specific to enable us to say that" in 1924 the 7½ cent fare was "unlawful"—*except* clear uncontradicted evidence that it was confiscatory [*supra,* 31,]; in 1924 there was no direct evidence of confiscation before the Commission and no issue as to confiscation, for the simple reason that there had been no valuation of the Company's property. [R. 248, 266, 276.] True, the Commission did consider the factors above mentioned in the opinion of the Court of Appeals, but instead of holding that the public, on account of "value of service" or for any other reason, is entitled to service for less than cost, expressly held the contrary. In the 1924 rate case the Commission said:

> "Of one thing the public must be convinced. It must make up its mind to pay the cost of the service it receives. There is no magic in the operation of a street car system or any other utility that enables it to dodge the economic laws that affect the individual. When the Company has to pay twice as much for labor, and almost twice as much for everything else it uses, in producing a street car ride, it cannot sell its product at the price prevailing before its costs increased, any more than the individual can sell his labor at the prices prevailing before the startling increases in the cost of living, brought on by the war. The fact that the increase in cost to the user of street car transportation in Baltimore thus far has been only 40 per cent., while the operating costs of the railway company have increased from $4,102,766 in 1915 to $9,799,312 in 1923, or more than double, and taxes have increased from $904,675 to $1,800,335, while costs in substantially all non-regulated commodities and service have increased from at least 50 per cent. to 200 per cent., should indicate to the public the value it receives from the regulation of utilities.
>
> • • •
>
> "It is not to be expected that the average citizen can acquaint himself with all the complexities involved in determining a just rate of fare, and he is not to be

blamed when he forms his opinion from the statements of those who are supposed to know the truth, and whose business it is to find out the truth. But there is no excuse for those who know, or who, with reasonable diligence, can learn the exact truth of the situation when they attempt to mislead the public into believing it can get its street car rides for less than cost of production."

[R. 251, 252; 15 P. S. C. Maryland 104.]

JUDGE ADKINS in his concurring opinion in the Court of Appeals, (filed shortly after the opinion of the Court), stating "what [he understands] to be the meaning of JUDGE OFFUTT and of the Court," says:

"It was not intended, as I understand, to suggest that there is anything in the record to indicate that a ten-cent fare would be more than the service is worth if such a fare should be found necessary to pay for the cost of the service and to give the company a fair return on the value of its property." [R. 1654; 155 Md. 608; *infra*, 153.]

II.

THE COMPANY'S ANNUAL DEPRECIATION ALLOWANCE IS PROPERLY BASED ON PRESENT VALUE, NOT ON COST, OF ITS DEPRECIABLE PROPERTY.

The Court of Appeals unanimously [R. 1647-1650; 155 Md. 600-603; *infra*, 146-149], and JUDGE ULMAN also [R. 68-69], so hold; the Commission in its supplemental opinion [R. 1694] and order of November 28, 1928, so acted. On the original bill and on the first appeal to the Court of Appeals subordinate questions of law and fact relating to depreciation were also presented and are discussed in the opinions of JUDGE ULMAN and the Court of Appeals; after the Commission's supplemental opinion and order of November 28, 1928, these subordinate questions did not arise on the supplemental bill or on the second appeal to the Court of Appeals. The only question now presented is the question of law, whether

annual depreciation allowance should be based on present value or on cost. [*Supra,* 11-12.] On this question the Court of Appeals in effect holds that to base depreciation allowance on cost, instead of present value, is not only contrary to the Constitution of the United States, and therefore contrary to the similar provisions of the Maryland Constitution, but also unreasonable, *i. e.,* contrary to the state statute [Public Service Commission Law, section 43. 404, *infra,* 109.]

On the question now presented the Court of Appeals says:

"DEPRECIATION.

"Assuming that a schedule of fares which will yield to the Company a return of 6.26% on the value of its property is neither confiscatory nor unreasonable as a matter of law, the next question is whether the schedule adopted by the Commission in this case will in fact yield such a return. The answer to that question necessarily involves the allowance made for the depreciation of the Company's property used in the service to which it is dedicated. It is an elementary principle not only of constitutional law, but of common right, that such a Company must be permitted to earn such an income as will not only yield a fair return on the fair value of its property, but which will be sufficient to enable it to keep its property at a constant level of efficiency, so that it will be adequate for the public needs, and so that the value upon which the return is based will not be lessened. Anything more than that would be unjust to the public, anything less than that would be unjust both to the public and to the Company. For the public should not be required to pay rates based upon the present value of the property if that value is to be permitted to steadily depreciate, nor, should the Company's property be consumed in the public service without adequate provision for restoring it to the equivalent of its value. So that the Company is entitled to such an allowance as will not only adequately provide for current repairs, but for depreciation due to necessary re-

tirements, obsolescence, and the diminishing utility of property which cannot be arrested by repairs. So much is self-evident, is conceded by the parties to this appeal, and does not appear to be questioned anywhere. *Knoxville, etc., vs. Water Company,* 212 U. S. 1, Rose's Notes.

"The allowance made for current repairs under the head of maintenance does not appear to be questioned, so that the only inquiry is whether the allowance for depreciation is adequate. The Commission in fixing the fare schedule allowed * * * for depreciation, * * * $883,544 in 1928 * * * and its opinion indicates that in reaching that conclusion it considered the cost and not the present value of the Company's depreciable property. Unquestionably there is authority for that method of calculating a proper depreciation reserve, but in our opinion it is artificial, illogical and unsound, and ought not to be approved, and since we cannot say that proper methods would not have produced a result which would have affected the rate schedule adopted, the case should be remanded to the Commission in order that it may consider and determine the proper allowance for depreciation in accordance with rules hereinafter stated, and if necessary re-adjust the rate schedule to cover any changes it may make in that allowance.

"* * * if the conclusion actually reached was proper, the fact that it was reached by improper methods, would not justify us in disturbing it, so that the more important question is whether the base of the calculations by which it was tested was itself lawful. And that depends upon whether the Commission should have based its allowance for depreciation upon the original cost of the property, or upon its present value. It actually did use cost and not present value as the basis of its conclusion, and here again it must be said that there is authority for its procedure. But in our opinion it is justified by neither law nor right reason.

"In valuing the property for rate making purposes the Commission based its conclusion upon its present value and not upon its original cost, and in fact the case of *Havre de Grace Bridge Co. vs. P. S. C. supra,* left it no alternative. But if it was essential to adopt

that method for ascertaining the value of the property to which the rates were applied, it is not easy to see why it should not be adopted in estimating the amount needed to replace that property when it is worn out or becomes obsolete and worthless. If the Company paid $100,000 for property now only worth $10,000, it would be grossly unfair to the public to base its annual depreciation on its cost, and if on the other hand the Company paid $10,000 for property now worth $100,000, it would be equally unfair to it to compel it to sell that property to the public at 10% of its real value. These conclusions seem to be self-evident, and while there is authority to the contrary, they are supported by the reasoning in such cases as the *Havre de Grace Bridge Co. vs. Public Service Com.* supra, *Knoxville vs. Water Co.*, supra, and *Mich. Pub. Util. Com. vs. Mich. St. Tel. Co.*, 228 Mich. 658, and from the standpoint of fair play both to the Company and the public are inevitable. To require the Company to sell its service at rates which made no provision at all for the replacement or repair of the property when worn out or obsolete, would be plain confiscation, and to require it to sell it at rates which make an inadequate provision for the return of its value when worn out or obsolete as a result of public service can be no less.

"Counsel for the Commission suggest that to restore value would be to 'require the financing of additions to plant, to the extent of the excess of replacement over original cost of property replaced, by the public, which would in turn have to pay a return on the capital thus required.' The meaning of that suggestion is not altogether clear, but if it is that the Company is entitled to the return of anything less than the value of its property it cannot be sustained. Money deducted from earnings to replace equipment which has become worn out or obsolete, by other equipment of the same character and the same value, adds nothing to Company's resources but merely keeps them at the same level."

[R. 1647-1648, 1649-1650; 155 Md. 600-603; *infra*, 146-149.]

Property rights of a public utility include the right to

earn (1) a return [of 100 per cent.] *of* the property [*i. e.*, the *value* of the property] used and *consumed* [physically or economically] in the public service and (2) a return [of say 8 per cent.] *on* the property [*i. e.*, the *value* of the property] used and *not* yet *consumed*. The two rights—to a return *of* property, and a return *on* property—pertain to the same property and are essentially one and the same right. In point of time and urgency the right to a return *of* property is anterior to the right to a return *on* property; the former once violated, the property is gone; the latter may be temporarily invaded and later restored.

> "Before coming to the question of profit at all the Company is entitled to earn a sufficient sum annually to provide not only for current repairs, but for making good the depreciation and replacing the parts of the property when they come to the end of their life. The Company is not bound to see its property gradually waste, without making provision out of earnings for its replacement. It is entitled to see that from earnings the *value* of the *property invested* is kept unimpaired, so that at the end of any given term of years the original investment remains as it was at the beginning. It is not only the right of the Company to make such a provision, but it is its duty to its bond and stockholders, and, in the case of a public service corporation at least, its plain duty to the public." (Italics ours.)
>
> *Knoxville vs. Water Co.*, 212 U. S. 1, 13-14.

As the italicized words in the same sentence show, "investment" refers to "*property invested*," not to the *money* originally *invested* in the property. That is to say, "investment" is used in the sense of "that in which money is laid out or invested" [Century Dictionary] and not (as in the term "prudent investment") in the very recent special sense of *cost* as distinguished from *value*. At the moment when MR. JUSTICE BRANDEIS' dissenting opinion [*Southwestern Bell Telephone Co. vs. Public Service Commission*, 262 U. S. 276] had brought the term "prudent investment"

into vogue this Court again used "investment" in the old sense, viz., "a fair and reasonable return on the capital investment—the value of the property." [*Bluefield Co. vs. Public Service Commission,* 262 U. S. 679, 694.]

> "The property is held in private ownership and it is that property, and not the original cost of it, of which the owner may not be deprived without due process of law."
>
> *Minnesota Rate Cases,* 230 U. S. 352, 454.

In the *Knoxville* case the facts, and the utility's *duty* to the public, concerned *replacements,* made or neglected. The *right* of the utility is not limited to *replacements* but is the same as to all *retirements,* whether accompanied by replacements or not. The utility is entitled to a return of *all* property *retired,* whether replaced or not, through periodic allowances out of earnings to provide *in advance* for the retirements — certain to occur at an uncertain time. Whether a street car by accident or a gas main by explosion is destroyed and is replaced, or the fenders on street cars or a main to an exhausted gas well is retired and is *not* replaced, in either event the utility has *lost* property consumed (physically or economically) in the public service and is entitled to a *return* of such *property, i. e.,* its *value.* Failure to provide out of earnings for retirements does not relieve the utility of the *duty* to make replacements. Conversely, absence of need or duty to replace does not deprive the utility of the *right* to provide for retirements. "A depreciation charge resembles a life insurance premium." [Mr. Justice Brandeis, dissenting opinion in *Pacific Gas Co. vs. San Francisco,* 265 U. S. 403, 423.] It provides for return of the value of the *lost* property, whether that is or is not—or, like human life, cannot be—replaced.

However annual depreciation allowance is computed—whether directly as a percentage of property or indirectly

by reference to gross earnings or otherwise—unless it fairly provides for *return of property, i. e., value,* the utility's constitutional rights are invaded. *The law knows but one "rate base,"*—not one for return *of* property and another for return *on* property. Unless rates are sufficient to yield *both* returns, property is confiscated.

In *Southwestern Bell Telephone Co. vs. Public Service Commission,* 262 U. S. 276, this Court reaffirmed the rule of *Smyth vs. Ames,* 169 U. S. 466, that a utility is entitled to a fair return on the fair *value—not cost*—of its property. In applying this rule the Court computed the return on the value of the property by (*a*) reducing to a percentage of *value* the earnings available for *both* (1) depreciation allowance *and* (2) return *on* value and then (*b*) deducting from this percentage a separate percentage as the proper depreciation allowance. The Commission had used *cost* as the rate base for computing both (1) depreciation allowance and (2) return on property. This Court, holding this rate base improper for *either purpose,* used present *value* as the proper rate base for *both* purposes. In its opinion the Court said:

> "Witnesses for the Company asserted—and there was no substantial evidence to the contrary—that excluding cost of establishing the business the property was worth at least 25% more than the Commission's estimates, and we think the proof shows that for the purposes of the present case the valuation should be at least $25,000,000.
>
> "After disallowing an actual expenditure of $174,048.60 for rentals and services by the American Telephone & Telegraph Company and some other items not presently important, the Commission estimated the annual net profits on operations available for depreciation and return as $2,828,617.60—approximately 11⅓% of $25,000,000. That 6% should be allowed for depreciation appears to be accepted by the Commission. Deducting this would leave a possible 5⅓% return upon the minimum value of the property, which is wholly

inadequate considering the character of the investment and interest rates then prevailing."

262 U. S. 288.

Likewise in *Bluefield Co. vs. Pub. Serv. Comm.*, 262 U. S. 679, this Court said:

"*Rate of return.* The state commission found that the company's net annual income should be approximately $37,000, in order to enable it to earn 8 per cent. for return and depreciation upon the value of its property as fixed by it. Deducting 2 per cent. for depreciation, there remains 6 per cent. on $460,000, amounting to $27,600 for return. This was approved by the state court.

• • •

"Under the facts and circumstances indicated by the record, we think that a rate of return of 6 per cent. upon the value of the property is substantially too low to constitute just compensation for the use of the property employed to render the service."

262 U. S. 692, 695.

In *Brush Elec. Co. vs. Galveston*, 262 U. S. 443, the lower court (affirmed by this Court) used the same method of computing annual depreciation allowance and fair return on value. The master found the *present* value, on the basis of cost of reproduction less depreciation.

"This he held to be the fair present value of the property. Upon this valuation he recommended an annual return of 8% and an annual rate for depreciation of 4½%.

• • •

"The lower court accepted the master's estimate of 8% upon the value as a fair rate of return, but fixed 4% instead of 4½% as a fair rate for annual depreciation."

262 U. S. 445.

In *Georgia Ry. vs. R. R. Comm.*, 262 U. S. 625, the *amount* of the "rate-base" was disputed, both (1) as the base for the computation of fair return *on* property and *also* (2) as the base for computation of annual depreciation allowance. The lower court's valuation was sustained *for both purposes*, this Court holding that the second objection, like the first, depended upon the *value* of the property.

> "The other objections relate to the amount of the depreciation charge. The companies say the rate should be 2½ per cent. The Commission and the court allowed only 2 per cent. This question is one of fact, and we are not convinced that it was wrongly decided below. *The amount of the depreciation charge is also objected to on the ground that the percentage should have been figured on a larger value. This objection depends upon the value to be placed upon the physical property which has already been discussed.*" (Italics ours.)
>
> 262 U. S. 633.

In one of the cases above quoted this Court divided sharply as to *which* is *the* proper rate base, whether *value* or *cost*—*not* as to *how many* rate bases there are. None of the Justices has ever expressed an opinion that there could be one rate base, viz., *value*, for return *on* property and another, viz., *cost*, for depreciation, *i. e.*, return *of* property. On the contrary MR. JUSTICE BRANDEIS in his dissenting opinions has mentioned modern accounting [*Southwestern Bell Telephone Co. vs. Public Service Commission*, 262 U. S. 309, *supra*, 89-90]—and particularly *depreciation accounting* [*Pacific Gas Co. vs. San Francisco*, 265 U. S. 403, 423-425]—as advantages of adopting "prudent investment" as *the* "rate base." His opinions do not suggest that "prudent investment," *i. e., cost, not value*, already *is* the "rate base" for depreciation allowance, though *not* for fair return on property.

In *Michigan Public Utilities Commission vs. Michigan S.*

Telephone Company, 228 Mich. 658, P. U. R. 1925 C, 158, 163-164, the Court said:

> "Some contend that the proper basis for valuation is prudent investment cost. See dissenting opinion of MR. JUSTICE BRANDEIS, *Missouri ex rel. Southwestern Bell Teleph. Co. vs. Public Service Commission,* 262 U. S. 276, 67 L. ed. 981, P. U. R. 1923 C, 193, 43 Sup. Ct. Rep. 544, 31 A. L. R. 807; Goddard on Fair Value of Public Utilities, 22 Mich. Law Rev. 777. But it is settled that the rate base is present fair value as defined in *Smyth vs. Ames, supra,* and in the *Minnesota Rate Cases,* 230 U. S. 352, 57 L. ed. 1511, 48 L. R. A. (N. S.) 1151, 33 Sup. Ct. Rep. 729, Ann. Cas. 1916 A, 18. Computing depreciation (although perhaps convenient to accountants and bookkeepers), on investment cost, or book cost, as distinguished from present fair value, must be rejected. If the rate base is present fair value, then the depreciation base as to depreciable property is the same thing. There is no principle to sustain a holding that a utility may earn on the present fair value of its property devoted to public service, but that it must accept and the public must pay depreciation on book cost or investment cost, regardless of present fair value. We repeat, the purpose of permitting a depreciation charge is to compensate the utility for property consumed in service, and the duty of the Commission, guided by experience in ratemaking, is to spread this charge fairly over the years of the life of the property."

In *United Fuel Gas Co. vs. Railroad Commission,* 13 F. (2d), 510, 523, [affirmed without deciding this question, *United Gas Co. vs. Railroad Commission,* 278 U. S. 300], JUDGE HICKENLOOPER held that annual depreciation must be figured upon *value* rather than *cost.*

If for the retirement of property, now worth say $3,000,000, which originally cost $2,000,000, only $2,000,000 can be provided through depreciation allowance out of earnings, then the other $1,000,000 must be *lost* by the utility, either (1) by a net shrinkage of $1,000,000 in the

total value of its property or (2) by investing $1,000,000 of *additional capital* to replace the retired property and preserve the *same* total value *without* creating any *additional value*. This would mean that "the company *is* bound to see its property gradually waste, without making provision out of earnings for its replacement," [*contra, Knoxville vs. Water Co.*, 212 U. S. 1, 13] or else to *buy* year by year from its customers the very *property that already belongs to it*. In other words, though the excess of the value (in present dollars) of its property over cost (in past dollars) cannot be confiscated by depriving the utility of a return of say 8 per cent. on this value, yet this excess may be confiscated by depriving it of 100 per cent. from year to year and from day to day as property is retired.

In *State ex rel. Hopkins vs. Southwestern Bell Telephone Company*, 115 Kan. 236, P. U. R. 1924 D, 388, the Commissioner in his report (printed as an appendix to the opinion of the Court [P. U. R. 1924, D, 433]) said:

> "To what should the depreciation apply—the original cost, or the value of the property? It has been suggested by the state that, even though a return be allowed upon the value of the property, rather than upon the original investment in the property, the allowance for depreciation should be made upon the basis of the investment rather than upon the value of the property. One of the engineers for the state has testified that whichever theory is followed, whether it be that of protection of the investment or the value of the property, it should be consistently followed as to both the earnings and depreciation. There seems to me to be no escape from this conclusion. Whatever it is that is to be protected, there are two factors that enter into that protection; the allowance of a fair return, and the preservation of the property through a depreciation allowance. If the law is that a return should be figured upon the value of the property rather than upon the original investment in the property, it must be that the depreciation charge should be similarly figured.

"An illustration showing the reason for allowing a depreciation upon the value of the property rather than upon the original investment may be helpful. John Smith individually owns a telephone plant in which he invested $100,000. Assume now that the plant lived ten years and on account of increased prices it required $200,000 to duplicate the plant. At the end of that period the entire plant must be replaced. If his original investment of $100,000 is all, that is returned to him, and the plant is reconstructed and he puts his $100,000 back into the plant, and John Jones puts in the other $100,000 necessary to reproduce the identical plant, John Smith now owns but one-half the plant where theretofore he owned all of it. In that case, of course, his original investment has been protected, but his property has not been protected. So, in my judgment, the question of whether depreciation should be allowed upon the original investment or upon the value of the property resolves itself into the question heretofore discussed, and that is, whether the law contemplates the protection of the property or the protection of the original investment. In a way it is even more true of depreciation than of return, for telephone plants do not die, but are kept alive by replacements made from year to year, and these replacements must be made at present prices, and not at original cost."

P. U. R. 1924 D, 465.

For such invasion of constitutional rights the only excuse offered is certain alleged rules and methods of accounting. Among accountants a disposition to subordinate both *law* and *facts* to methods and convenience of *accounting* is not uncommon. The proper—and important—function of accounting is to *record facts,* not to *change facts* or to determine or change their legal significance. If for a particular purpose at hand, *e. g.,* valuation or ratemaking, the *facts* recorded by good accounting are *not* legally controlling or relevant, this may or may not be a good reason why accountants should modify or supplement their methods. Certainly this circumstance gives accountants no license to

change the law and the Constitution, to ignore material facts or to give controlling weight to other facts *not* in law material.

Primarily *accounting* is concerned with and based upon *cost,* not value; in ratemaking the *Constitution* and the *law* are concerned with *value.* In accounting cognizance is taken of value only in particular circumstances, *e. g.,* in respect of inventories or by specially writing books up or down from cost to value, as determined by an appraisal or valuation. Whether or not books should be so rewritten is an *accounting* question not material here. *Cost* does not become *value* by writing it in a book; *value* does not lose its *legal significance* or its *constitutional protection* because it is *not* written in a book. If this Court had been influenced by mere methods and convenience of accounting it would have adopted *cost,* instead of *value,* as the "rate base" on which utilities are entitled to earn a return, as urged in the dissenting opinions of Mr. Justice Brandeis.

Whenever cost is material, *e. g.,* when depreciation is computed for income tax purposes, *(cost* being the *statutory* basis for computing taxable gain), then accounting rules and methods may furnish means for determining such cost—and such depreciation on such a cost basis. [*United States vs. Ludey,* 274 U. S. 295.] So too, as was remarked by Judge Rose in language quoted by Judge Ulman [R. 69], "in the absence of great changes in value" book cost "would be a fairly accurate measure for present value." [*Chesapeake & Potomac Telephone Co. vs. Whitman,* 3 F. (2d) 938, 942.] In other words, whenever *in fact* cost and value are not materially different in amount, then book cost (though *not* material *as such*) may conveniently and with approximate accuracy be used as *evidence* of *value.* [*Board of Commissioners vs. N. Y. Telephone Co.,* 271 U. S. 23, 27.] When, however, cost is not material but *value* is and *in fact* cost and value are materially different in amount, then accounting rules and methods concerning cost will *not* deter-

mine value or depreciation in value. As has already been said, Constitution, law and facts can not be changed by, or subordinated to, methods and convenience of accounting.

There is *no judicial* authority for such subordination of law to accounting and establishment of two rate bases, value for return *on* property, cost for return *of* property, except a master's report in *Georgia Railway & Power Co. vs. Railroad Commission,* P. U. R. 1925 A, 546, 594-595. In this respect the master's report is contrary to the clear implication of the previous language of this Court in the same case [*supra,* 91]. The very fact that several commissions—by no means all [*Cincinnati and Suburban Bell Telephone Co.,* P. U. R., 1924 E, 849]—have held otherwise and that convenience is a temptation to subordinate law to accounting only emphasizes the lack of *judicial* support for so convenient a form of confiscation.

In the state courts the Commission's counsel quoted a report (also quoted in the Commisison's opinion [R. 43]) of the Interstate Commerce Commission as to *accounting* rules and regulations concerning depreciation. [*Depreciation Charges of Telephone Companies* and *Depreciation Charges of Steam Railroad Companies,* 118 I. C. C. 295.] That long, able report contains much controversial matter, which does not become law by being there stated. Indeed, on its face the entire report relates to *accounting* and does not purport to relate directly to *ratemaking.* This last comment is also applicable to a statement (quoted by the Commission's counsel from Whitten-Wilcox on Valuation of Public Service Corporations, §853) of the *accounting* practice of the American Telephone & Telegraph Company, which includes an express statement that "this method [computation of depreciation charges on the basis of cost] tends to certainty and definiteness in the *accounting*" [italic ours]. The Michigan telephone case [*supra,* 91-92] shows that in *ratemaking* the Bell System does not subordinate its legal rights to its accounting practice.

III.

THE ABOLITION OF THE SECOND FARE TO HALETHORPE IS UNCONSTITUTIONAL AND CONFISCATORY.

The Company is doubly in the grip of arbitrary power if by the same Commission order (1) its rates as a whole can be limited to a return that "can only rest in the judgment of the Commission" and (2) a fare on an unprofitable line, amounting to $40,000 a year, can be abolished altogether on the ground that rates as a whole are not confiscatory.

There are no disputed facts about Halethorpe. The testimony [R. 423-432, 524, 620-631, 758-770, 773-783, 834-835, 925-926, 1052-1065, 1078-1102, 1213-1222, 1245-1246] consists principally of the obvious fact that Halethorpe real estate developers would benefit by abolition of the second fare and Halethorpe residents would prefer one fare to two and of argument about equally obvious facts.

Halethorpe is an unincorporated community in Baltimore County, southwest of Baltimore City, 1.87 miles beyond the city limits. Baltimore City is not in any county. The city limits are not a circle. Nor is what the Commission calls "the center of the city," *i. e.*, the "business center," Baltimore and Charles Streets, a geographical center. This "center" is nearer the city limits at the southwest than anywhere else. Consequently a ride from the "center" to this nearest city boundary, viz., 4⅜ miles, is shorter than any other ride from the "center" to the city limits, viz., from 5⅜ to 8¼ miles. [R. 101.]

In 1918 the Baltimore City limits were extended, so as to increase the area of the city almost 200 per cent. and the population less than 20 per cent. [*supra,* 63], by the annexation of much rural territory [Acts of 1918, Chapter 82, section 10; *infra,* 113]. There is still rural property within the old city limits, as extended in 1888, [Acts of 1927,

Chapter 331, amending Public Local Laws, Article 4, section 4; *infra,* 114. *Williams vs. Broening, Mayor,* 135 Md. 226, 236], and much rural and semi-rural territory, at the southwest as well as in other parts, within the present limits. [R. 1214.] [See map, Halethorpe Exhibit C, R. 1606. Present 1918 boundary shown much fainter than 1888 boundary and previous boundary.]

After annexation in 1918 the Commission gradually imposed on the Company zone extensions to the new city limits. In 1924, at an annual cost of upwards of $500,000 to the Company, the Commission extended *all* first fare zones to the city limits, thus establishing a single fare within the city limits, regardless of distance, density of population, expense, return to the Company or any other consideration. [R. 265-266, 275-276.]

In extending all first fare zones to the city limits the Commission ordered a few short overlaps beyond the city limits. There are now five such overlaps—one of 1⅜ miles to Dundalk Junction on the Sparrows Point and River View lines, one of 1 mile on the Woodlawn line and three others not more than half a mile. [R. 104.] *No other first fare zone extends as far beyond the city limits as Halethorpe is.* The Sparrows Point line is one of the Company's best paying lines [R. 1213]; the Dundalk overlap was ordered to give residents on that line a short single fare connection with River View, (a Company pleasure resort). [R. 1219.] The Commission in its opinion says:

> "While it is true that the purpose of the Commission in extending fare zones in previous cases was to extend them only to the new city limits, and to make the city line the limit of the single fare zone, it recognizes the fact that in some cases those zones were extended substantial distances beyond the city boundary. In most cases these extensions were made to meet special conditions, and the Commission did not, and does not now, consider them precedents for general extensions of single fare zones beyond the city limits." [R. 51.]

As the Court of Appeals says, "the extension to Hale-

thorpe is not profitable, was built at a loss at the request of the inhabitants of the territory served by it, and it is intimated, upon their assurance that they would not ask that it be included in the city fare zone." [R. 1652; 155 Md. 606; *infra*, 151-152, R. 1213.] On the other hand before the Commission witnesses for the complaining real estate developers testified that the value of a single carfare is capitalized as added land value and prices are increased accordingly. [R. 1097-1098.]

The expense to the Company and the profit to real estate developers from suburban extension is stated in the Commission's opinion in general terms which are particularly applicable to Halethorpe.

> "That the extension of the railway system into the suburbs has resulted in the development of the sections which the lines serve is beyond question. Even in these days of almost universal use of the automobile, property values, except perhaps in that part of the City as it existed prior to the annexation of 1888, are dependent largely upon street railway transportation. Withdrawal or material curtailment of service would be felt immediately in the lowering of real estate values, for there is no transportation agency which could give so comprehensive a service at such low cost.
>
> "Moreover, the development of property and the creation of higher values along the outlying lines of the Company often have been largely at the *expense* of the Company. While creating increased values in land by the extension of its lines and service, thus benefiting immediately the property owner (and the City and County by increasing the taxable basis), the Company has no way of sharing in the increased values it creates until the time comes when there is sufficient development in new territory to produce enough traffic to make the operation of the lines compensatory. Until that time is reached, the Company is compelled to give service to new territory at a loss. This is not the case with gas, electric or telephone companies, for as lines of such companies are extended into new or sparsely settled sections, those receiving and benefiting by their

service are required to pay part of the cost of building the extension, being reimbursed as new customers come on the lines. Many of the Company's lines which extend into the suburbs are still operated at a loss.

• • •

"One reason for the Company's plight today is the fact that following annexation in 1918, the city zones on the street car system were extended to the new city line, this line for nearly the entire distance around the City having been extended about two miles. Annexation, while a desirable thing for the City, did not benefit the Railways Company in the slightest degree. Indeed, it imposed additional obligations upon it, and when extensions of fare zones were made it caused extensive loss of revenue which had to be made up through rate increases." [R. 22-23.]

In abolishing the second fare to Halethorpe the Commission has confiscated the Company's property for the private benefit of real estate developers. The effect of the Commission's order is to reduce the price of street car rides, thereby increase the price of land at Halethorpe and thus compel the Company to subsidize real estate developments that have already proved profitable to the developers but not to the Company.

To this charge of confiscation the Commission and the state courts reply (1) that it is sufficient if the Company's rates as a whole are not confiscatory and (2) that the second fare to Halethorpe is unjustly discriminatory. *Neither the Commission nor the state courts find the second fare to Halethorpe in itself unreasonable.*

1. Though exceptional circumstances, *e. g.*, a long established *status quo*, may justify an unremunerative rate for part of a street railway system when rates as a whole are remunerative [*Puget Sound Traction Company vs. Reynolds*, 244 U. S. 574, 579-581] gratuitous service can not be required and unremunerative rates can not arbitrarily be

made still more unremunerative. On the contrary the general rule is that a street railway, like other utilities, is entitled to substantial compensation for each part of its business.

In *Banton vs. Belt Line Railway,* 268 U. S. 413, this Court, holding unconstitutional a commission order fixing a joint street car fare, said:

> "There is involved only the rates applicable to a part of the company's business. In this respect the case is similar to *Northern Pacific Railway vs. North Dakota,* 236 U. S. 585; *Norfolk & Western Ry. vs. West Virginia,* 236 U. S. 605, and *Northern Pacific Railway vs. Department of Public Works of Washington,* 268 U. S. 39. The applicable law is plain. The State is without power to require the traffic covered by the fare enjoined to be carried at a loss or without substantial compensation over its proper cost. And such cost includes not only the expenditures, if any, incurred exclusively for the traffic, but also a just proportion of the expenses incurred for all traffic of which that in question forms a part. The cost of doing such business is not, and properly cannot be, limited to the amount by which total operating expenses would be diminished by the elimination of, or increased by adding, the transfer passengers in question. It would be arbitrary and unjust to charge to that class of business only the amount by which the operating expenses were, or would be, increased by adding that to the other traffic carried. Outlays are none the less attributable to transfer passengers because also applicable to other traffic. Operating expenses which are incurred on account of all passengers carried, and which are not capable of direct allocation to any class, should be attributed to the transfer passengers in question in like proportion as such expenses are fairly chargeable to other passengers receiving like service. While the carrier has no constitutional right to the same rate or percentage of return on all its business, the State may not select any class of traffic for arbitrary control and regulation. Broad as is its power to regulate, the State does not enjoy the freedom of an owner. Appellee's property is held in

private ownership; and, subject to reasonable regulation in the public interest, the management and right to control the business policy of the company belong to its owners. *Northern Pacific Railway vs. North Dakota, supra,* 595, 596; *Norfolk & Western Ry. vs. West Virginia, supra,* 609; *Interstate Commerce Commission vs. Chicago, G. W. Ry,* 209 U. S. 108, 118."

268 U. S. 421-422.

See also *Chicago, etc., Railway vs. Public Utilities Commission,* 274 U. S. 344.

The fact that a railroad company voluntarily established and continues unremunerative commutation rates to a certain suburban point on its line does not justify a commission in requiring the establishment of unremunerative commutation rates to more distant points on the same line. A commission order requiring such extension of commutation rates deprives the railroad company of property without due process of law. [*Public Service Commission vs. Atlanta & W. P. R. Railroad Company,* 164 Ga. 822, P. U. R. 1928 B, 136.]

2. (*a*) There is no evidence to support a finding of *unjust* discrimination *against Halethorpe.* Zone lines must be drawn somewhere. Wherever they are drawn somebody will be nearest beyond the line—unless all second fares are abolished. If the Commission may first adopt the city line as its standard, (by which to burden the Company with successive zone extensions), and then as soon as this standard is attained may adopt a contradictory standard, viz., "the center of the city," (by which to burden the Company with another series of zone extensions), the inevitable result will be the abolition of all second fares. "The center of the city" is a standard never before used by the Commission or the Company, incompatible with the city line standard adopted and applied by the Commission at the Company's expense. The Company need not maintain that the city line standard is the only possible standard, though it is a com-

mon standard frequently established by statute [*Portland Railway Company vs. Oregon R. R. Commission,* 229 U. S. 397, 407]. It is enough that the Commission, having adopted and applied this standard and still paying lip service to it [*supra,* 98], can not now, as a pretext for further burdening the Company, characterize as "unjust discrimination" the truism that its own standard is inconsistent with an inconsistent standard.

The Commission's suggestion of "legislative discrimination" against Halethorpe in the Annexation Act of 1918 [R. 51] can not be intended to be taken literally. As this Court judicially knows, and everybody in Maryland knows, no community desiring annexation is ever denied annexation; the usual complaint is exactly the opposite, viz., that annexation is imposed without the consent of the annexed [*Hunter vs. Pittsburgh,* 207 U. S. 161], as was done and bitterly complained of in this very annexation of 1918 [*McGraw vs. Merryman,* 133 Md. 247]. The only "legislative discrimination against that territory lying to the southwest of the old city boundary" consisted of the continued opportunity to enjoy exemption from city burdens extended to annexed territory and at the same time to enjoy many benefits of proximity to the city.

The Court of Appeals says the city line standard "was established apparently with the consent of the Company that there might be a single fare within the city limits, and has certainly been disregarded in at least several instances." [R. 1652; 155 Md. 606; *infra,* 151.] The Company's consent (to the extent of not contesting the Commission's action) to one standard certainly does not estop the Company from resisting imposition of another wholly incompatible standard. Nor do five short overlaps beyond the boundaries of a city containing 95 square miles destroy or impair the city line standard as a standard or justify total disregard of the standard in the imposition of arbitrary burdens on the Company.

None of these five overlaps, in sections of the city remote from Halethorpe, is injurious to Halethorpe. There is no evidence that these overlaps have prevented anybody from living in Halethorpe or have otherwise injured the people of Halethorpe. The evidence does show that real estate promotions are developed more rapidly with a single fare than with two. In this respect the Halethorpe developers would doubtless benefit by being put on an equality with all the many suburban developments within the city limits. The five overlaps make an imponderable addition to the many single fare suburban developments that are within the city limits. These overlaps do not injure Halethorpe; if they injure anybody they injure adjoining developments across the city line, which must share with these county neighbors the benefit of a single carfare.

The facts in the instant case do not remotely resemble those in *Portland Railway Company vs. Oregon R. R. Commission,* 229 U. S. 397, 411-412, cited in the Commission's opinion. In that case the unjust discrimination did *not* consist in extending all first fare zones to the city limits; an Oregon statute did just that [229 U. S. 407]. Nor did it consist in overlaps of first fare zones beyond the city limits. The unjust discrimination included fares of ten cents from one point 1.35 miles beyond the city limits and five cents from another point 3.50 miles beyond the limits [229 U. S. 399, 401, 402, 404]. Nor was it shown that either fares as a whole or the particular fares in question were confiscatory [229 U. S. 413.]

(*b*) The shorter answer to the charge of discrimination is that if any departure from the city line standard—or if the city line standard itself—were unjustly discriminatory against Halethorpe, then the Company *at its option* would be entitled to remove the discrimination *either* by abolishing the second fare to Halethorpe or by abolishing the five overlaps—or even by shortening first fare zones within the

city limits if a single city fare were itself deemed unjustly discriminatory. If a rate reasonable in itself is unjustly discriminatory the utility *at its option* may remove the discrimination either by reducing the higher or increasing the lower rate [*Chicago, I. and L. Ry. vs. United States,* 270 U. S. 287, 293; *United States vs. Illinois Central R. R.,* 263 U. S. 515, 521; *American Express Co. vs. Caldwell,* 244 U. S. 617, 624]. This fundamental right, which does not need elaboration, was insisted on by the Company before the Commission and in the state courts, but was ignored by the Commission and the courts.

Conclusion.

In No. 55 on the Company's appeal the decree of the Court of Appeals should be reversed. In No. 64 the Commission's cross-appeal should be dismissed and its petition for certiorari denied for want of jurisdiction, or on the merits the decree of the Court of Appeals *quoad* the Commission's cross-appeal should be affirmed.

Respectfully submitted,

CHARLES MCHENRY HOWARD,
CHARLES MARKELL,
HENRY H. WATERS,
Counsel for The United Railways and Electric Company of Baltimore, Appellant in No. 55, Cross-appellee and Respondent in No. 64.

APPENDIX A.

Maryland Statutes Cited in Brief.

[The text of *all* Maryland statutory provisions cited in the brief is here quoted, for the possible convenience of the Court, *not* because the Company deems *any* of these statutory provisions controlling or the text important in the instant case.]

Annotated Code of Maryland (Edition of 1924 and 1929 Supplement), Article 23, Corporations.

353. [1910, ch. 180 (Public Service Commission Law), sec. 6; 1912, ch. 563; 1924, ch. 48; 1927, ch. 201]. * * * Whenever application, protest or other form of complaint is made to the commission of or concerning any act or omission, any service, regulation, equipment, appliance or facilities, or the adequacy or quality thereof, any preference or advantage or any prejudice, disadvantage or any discrimination, any rates, tolls, fares or charges, or any regulations or practices with respect thereto, or of or concerning any other matter or thing done, permitted, maintained or omitted to be done by any person, firm or corporation, subject to the jurisdiction of the commission, with respect to any of the requirements imposed by the Public Service Commission Law, or by any other law, by any charter, franchise or ordinance, by any order of the commission or otherwise, it shall be the duty of the People's Counsel, upon a *prima facie* case, or otherwise, to participate in the preparation or reforming of the pleadings before the commission, if need be, or investigating or further investigating the facts or evidence upon which the application, complaint or protest is based or may be based and to appear before the commission in respect to investigations or in support of applications or complaints by or on behalf of or in the interest of the public or in defense of the public interests when involved, and the services of the experts employed by said commission as well as the records and other facilities of the

commission shall be availed of by the People's Counsel in the performance of these public duties; provided that nothing herein contained shall be construed to prevent any party or interest in any proceedings before said commission from appearing in person or from being represented by counsel.

• • •

385. [1910, ch. 180, sec. 30.] The commission shall, whenever it may deem it desirable to do so, investigate and ascertain the fair value of property of any corporation subject to the provisions of this sub-title and used by it for the convenience of the public. For the purpose of such investigation the commission is authorized to employ such engineers, experts and other assistants as may be necessary. Such investigations shall be prosecuted with diligence and thoroughness, and the results thereof reported to the legislature at each regular session. Such valuation shall show the value of the property of every such corporation as a whole, and the value of its property in each of the several counties and municipalities within the State of Maryland. Every such valuation shall be so made and ascertained by the commission that as far as possible it shall not disturb the value of bonds of said corporation issued prior to April 5, 1910.

Every such corporation shall furnish to the commission from time to time, and as the commission may require, maps, profiles, contracts, reports of engineers and other documents, records and papers, or copies of any and all of the same in aid of such investigation, and to determine the value of the property of such corporation used for the public service, and every such corporation is required to cooperate with the commission in the work of the valuation of its property in such further particulars and to such extent as the commission may reasonably direct. The commission shall thereafter, in like manner, keep itself informed of all extensions and improvements or other changes

in the condition of the property of the said corporations and ascertain the fair value thereof, and from time to time, as may be required for the regulation of corporations under the provisions of this sub-title, revise and correct its valuation of the property of such corporations. To enable the commission to make such changes and corrections in its valuation, every corporation subject to the provisions of this sub-title is hereby required to report currently to the commission, and as the commission may require, all improvements and changes in its property and to file with the commission copies of all contracts for such improvements at the time same are executed.

Whenever the commission shall have completed the valuation of property of any such corporation and before such valuation shall become final, the commission shall give notice in the manner prescribed in this sub-title for the service of a copy of an order upon such corporation, to the company or companies owning or operating such property, stating the valuation placed upon the several lines of roads or classes of property of the said company used by it for the convenience of the public, and shall allow the company or companies a reasonable time in which to file a protest of same with the commission. If no protest is filed within such time such valuation shall become final. If notice of contest is filed by any such corporation, the commission shall fix a time for hearing of the same, and shall proceed as promptly as may be possible to hear and consider any matter relative and material thereto which may be presented in support of said protest. If after hearing any contest of such valuation, under the provisions of this subtitle, the commission is of the opinion that the tentative valuation is incorrect, it shall make such changes as shall make the same a fair valuation of such property and shall issue an order to make such corrected valuation final. All final valuations by the commission shall be *prima facie* evi-

dence of the value of said property in proceedings had in pursuance of this sub-title.

387. [1910, ch. 180, sec. 31½.] Every gas corporation and every electrical corporation shall furnish and provide such service, instrumentalities and facilities as shall be reasonably safe and adequate and in all respects just and reasonable. All charges made or demanded by any such gas corporation and electrical corporation for gas, electricity or any service rendered or to be rendered, shall be just and reasonable and not more than allowed by law or by order of the commission; "and all acts or parts of acts heretofore passed and now existing, prescribing or limiting the price at which any gas corporation or electrical corporation, or any other corporation subject to this sub-title, may furnish, sell or dispose of its gas or electricity or other product or utility are hereby repealed, it being the intent of this sub-title that the powers of the commission herein created to ascertain the price of such gas or electricity or other product of utility as provided for herein, shall supersede all such acts or parts of acts aforesaid." * * *

404. [1910, ch. 180, sec. 43.] Any corporation subject to this sub-title, or any of the provisions of this sub-title, and any person in interest being dissatisfied with any order of the commission, fixing any rate or rates, tolls, charges, schedules, joint rate or rates, or any order fixing any regulations, practices, acts or service, may commence any action in the circuit court for any county, or before any judge of the supreme bench of Baltimore City, in any court of Baltimore City of appropriate jurisdiction which may be adopted for the purpose, against the commission as defendant to vacate and set aside any such order on the ground that the rate or rates, tolls, charges, schedules, joint rate or rates fixed in such order is unlawful, or that any such regulation, practice, act or service fixed in such order is unreasonable, in which action a copy of the complaint shall be served with the summons.

The answer of the commission to the complaint shall be served and filed within twenty days after service of the complaint, whereupon said action shall be at issue and stand ready for trial upon fifteen days' notice to either party.

All such actions shall have precedence over any civil cause of a different nature pending in such court, and the said courts shall always be deemed open for the trial thereof, and the same shall be tried and determined as other civil actions.

Every proceeding, action or suit to set aside, vacate or amend any determination or order of the commission, or to enjoin the enforcement thereof or to prevent in any way such order or determination from becoming effective, shall be commenced, and every appeal to the courts or right or recourse to the courts shall be taken or exercised within sixty days after the entry or rendition of such order or determination, and the right to commence any such action, proceeding or suit, or to take or exercise any such appeal or right of recourse to the courts, shall determine absolutely at the end of such sixty days after such entry or rendition thereof.

No injunction shall issue suspending or staying any order of the commission, except upon application to one of the judges of the supreme bench of Baltimore City, or to the circuit court of one of the counties, and upon notice to the commisison and after hearing.

405. [1910, ch. 180, sec. 44.] If, upon the trial of such action, evidence shall be introduced by the plaintiff which is found by the court to be different from that offered upon the hearing before the commission, or any commissioner, or additional thereto, the court, before proceeding to render judgment, unless the parties to such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission and shall stay further proceedings

in said action for fifteen days from the date of such transmission.

Upon the receipt of such evidence the commission shall consider the same and may alter, modify, amend or rescind its order relating to such rate, or rates, tolls, charges, schedules, joint rate or rates, regulations, practice, act or service complained of in said action, and shall report its action thereon to said court within ten days from the receipt of such evidence.

If the commission shall rescind its order complained of, the action shall be dismissed; if it shall alter, modify or amend the same, such altered, modified or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon as though made by the commission in the first instance.

If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order.

406. [1914, ch. 445, sec. 44½.] Before the trial of such action a transcript duly certified by the Secretary of the Commission of all the papers and proceedings, including evidence, in the case before the Commission except such as are omitted by the stipulation in writing of the parties to such action, shall be filed by the Commission in such action and shall be evidence in like manner as the originals transcribed.

407. [1910, ch. 180, sec. 45.] Either party to said action, within twenty days after service of a copy of the order or judgment of any court of Baltimore City or of the circuit court of any county, may appeal to the court of appeals of Maryland. Where an appeal is taken the cause shall, on the return of the record of the proceedings to the court of appeals of Maryland, be immediately placed on the docket of the then pending term of the court of appeals, and shall

be assigned and brought to a hearing in the same manner as other causes on the docket.

408. [1910, ch. 180, sec. 46.] In all trials, actions and proceedings arising under the provisions of this sub-title, or growing out of the exercise of the authority and powers granted herein to the commission, the burden of proof shall be upon the party adverse to such commission, or seeking to set aside any determination, requirement, direction or order of said commission, to show by clear and satisfactory evidence that the determination, requirement, direction or order of the commission complained of is unreasonable or unlawful, as the case may be.

409. [1910, ch. 180, sec. 47.] In all actions and proceedings in court arising under this sub-title, all processes shall be served and the practice and rules of evidence shall be the same as in civil actions, except as otherwise herein provided. Every sheriff or other officer empowered to execute civil processes shall execute any process issued under the provisions of this sub-title, and shall receive such compensation therefore as may be prescribed by law for similar services.

Acts of 1900, Chapter 313, amending Public Local Laws, Article 4, section 796, to read:

796. The United Railways and Electric Company of Baltimore, its successors and assigns, shall charge five cents, and no more, as a fare for the conveyance of each passenger over twelve years of age, and three cents, and no more, for each child between the ages of four and twelve years, from any point on any of its lines to any other point on such lines within the City of Baltimore; provided, that such company shall give a free transfer, when the same shall be requested, upon the payment of each cash fare, which transfer shall be good at all points of intersection of lines of said railway for a continuous ride, except at such points on said lines where such form a route so as to permit a

passenger to return in the same general direction of the line upon which the transfer was issued, the privilege of the transfer not to apply to the terminus of any line or route; provided, that nothing in this Act shall be construed to affect any of the interests of the Mayor and City Council of Baltimore in the said United Railways and Electric Company of Baltimore, or any of the railways consolidated under the corporate name.

Acts of 1918, Chapter 82. [Annexation Act.]

Sec. 10. And Be It Further Enacted, That the territory annexed to Baltimore City, by this Act is hereby declared to be a taxing district, and, for the year 1919, the Board of Estimates and the Mayor and City Council of Baltimore, in fixing a tax rate, in the fall of 1918, under Section 40 of the Charter, shall fix the rate of taxation for local purposes in said taxing district at a sum equal to 60% of the full city rate which shall be fixed by said Board upon real estate situate within the limits of Baltimore City as they existed prior to the passage of the Act of 1888, Chapter 98; and, in like manner, for the year 1920, the said Board of Estimates shall fix the rate for local purposes in said taxing district at an amount equal to 62% of the said full city rate on real estate in said old city limits; and so on, from year to year, with an increase of 2% each year of the percentage of the full city rate which is fixed as the rate upon real estate in the said old city limits, until the rate in said taxing district and in said old city limits shall become the same. Beginning with the rate for the year 1939, and thereafter the tax rate shall be the same throughout the entire city limits of the City of Baltimore as enlarged by this Act, provided that nothing in this Act shall be intended to repeal or affect any law or ordinances now existing or which may hereafter be passed fixing different rates of taxation upon different classes of property, the intent of this provision being that, beginning with the year 1939 and thereafter, there shall be the same rate of taxation through-

out the entire limits of Baltimore City upon the same classes of property. * * *

Acts of 1927, Chapter 331, amending Public Local Laws, Article 4, section 4, to read:

4. All personal property situated or held in the territory annexed to Baltimore City by the Act of 1888, Chapter 98, shall be subject to levy, taxation and assessment in the same manner and form, and at the same rate of taxation as property of similar character or description within the old limits of said city may be subject. It shall be the duty of the Appeal Tax Court of said city to divide all the real and leasehold property in said territory into three separate classes, to be known as urban, suburban and rural property, for the purposes of city taxation, and to revise said classification annually for city taxation on or before October 1st of each and every year until and including the year 1938 (after which year all real and personal property in the Old Annex shall come under the provisions of Chapter 82 of the Acts of 1918 with respect to the uniformity of taxation within the entire city limits as enlarged by that Act), in accordance with the following classification, said three classes to be defined and subject to city taxation as follows:

(1) All real and leasehold property in said territory which is now legally liable to full city taxation, and all real and leasehold property situated in said annexed territory, located in a block of ground not exceeding 300,000 superficial square feet, formed and bounded on all sides by intersecting streets, avenues or alleys, opened, graded, curbed and otherwise improved from curb to curb by pavement, macadam, gravel or other substantial material shall be classified as urban property, and shall be subject to the same rate of city taxation as real and leasehold property within the old limits of said city may be subject. (2) Every lot, or piece of real and leasehold property to a depth not exceeding 200 feet situate in said territory, which fronts,

binds or abuts on any public street, avenue or highway, lighted at public expense, and completely paved from curb line to curb line, including gutters, with bitulithic asphalt, asphalt blocks, Belgian blocks, vitrified bricks, macadam in good condition, as heretofore laid before this section of this Article took effect, or if laid subsequent thereto, laid without direct assessment for the cost thereof, in whole or in part, upon the abutting property owners, unless the owners of a majority of front feet of property binding upon said street, avenue or highway, or the part thereof to be paved, expressly assent to said direct assessment, and laid in accordance with existing standards of proper macadam construction as laid under the supervision of the Highways Engineer, or other improved pavement (or with cobblestones laid before this section of this Article took effect, or laid subsequent thereto upon the assent of the owners of the majority of the front feet of property binding upon said street, avenue, or highway, or the part thereof to be paved), as distinguished from earth or gravel, which streets, avenues or highways are continuously connected by public or private streets, roads, avenues or highways paved from curb line to curb line, including gutters, with bitulithic, asphalt, asphalt blocks, Belgian blocks, vitrified bricks, macadam or other improved pavement or cobblestones, as distinguished from earth or gravel, within the territory embraced within the old city limits, shall be classified as suburban property, and shall be subject, for the purposes of city taxation for the year 1928 at a rate equal to sixty-seven per cent. of the rate to which urban property may be liable, and for the year 1929 at a rate equal to seventy per cent. of the rate to which urban property may be liable, and so on from year to year with an increase of three per cent. of the full city rate each year until and including the year 1938, after which such property shall be subject to the full city rate.

(3) All real and leasehold property in said annexed ter-

ritory which does not come under either the classification of urban or suburban property, as hereinbefore defined, shall be classified as a rural property, and shall be subject, for the purposes of city taxation, for the year 1928 at a rate equal to thirty-four per cent. of the rate to which urban property may be liable, and for the year 1929 at a rate equal to forty per cent. of the rate to which urban property may be liable, and so on from year to year with an increase of six per cent. of the full city rate each year until and including the year 1938, after which such property shall be subject to the full city rate. All the easements and rights of way of railroads and the tracks or other structures erected thereon, and all easements or other property located in, on, under or over the streets, roads, avenues, alleys, highways or ways in said annexed territory, shall be and hereafter remain subject to taxation as now or hereafter provided by law.

APPENDIX B.

Opinion of Court of Appeals With Record References Inserted.

IN COURT OF APPEALS OF MARYLAND. [R. 1622]

[Title omitted.] [155 Md. 572]

OPINION—Filed July 16, 1928.

JUDGE OFFUTT delivered the Opinion of the Court.
BOND, C. J., and PARKE, J., dissent in part.

The United Railways and Electric Company of Baltimore, came into existence on the fourth day of March, 1899, as the result of a merger of all the street railway lines operating in and near Baltimore, with a total authorized capitalization of $76,000,000, of which $38,000,000 was in bonds, $14,000,000 in preferred stock and $24,00,000 in common stock. [R. 122.] The base fare at that time charged by its several constituent companies within the city limits was five cents, and by Chapter 313 of the Acts of 1900 the consolidated corporation hereinafter called the Company was specifically limited to a fare of five cents for the transportation of adults and three cents for children from any point on its lines within said city to any other point thereon which could be reached directly or by transfer at intersecting points, and that schedule it maintained until 1918. [R. 118.] [155 Md. 575]

In the meantime, the State, moving with a growing trend throughout the country, had abandoned its traditional policy of regulating public service corporations by direct legislative action, and had by Chapter 180 of the Acts of 1910 created the Public Service Commission of Maryland, hereinafter called the Commission, to which it had committed plenary powers in respect to regulating the rates [*R. 1623]

and service of public utilities, and had repealed existing legislation fixing rates for service furnished by such utilities, such repeal to become effective when and as the Commission determined in accordance with the law that such rates should be superseded by others. *Gregg vs. Public Serv. Com.*, 121 Md. 30.

[**155 Md. 576] **And on July 19, 1918, the Company for the first time applied to the Commission for its approval of a schedule of rates under which it would receive six cents for adults and a uniform increase of one cent from children between four and twelve years of age and riders using commutation tickets. [R. 115.] The Commission was unable to hear the application immediately and the Company on August 28, 1918, with the assent of the Commission, filed a revised schedule which took effect October 1st, 1918, and remained in effect until January 7th, 1919, when it was formally approved by the Commission. [R. 117, 120.]

On May 23rd, 1919, the Company applied for a further increase from six to seven cents for cash fares with four tokens for twenty-five cents [R. 155], which it subsequently changed to a request that it be permitted to collect a cash fare of ten cents with two tokens for fifteen cents [R. 153], and on September 30th, 1919, it was permitted to charge a cash fare of seven cents or six and one-half cents when tickets or other tokens were purchased [R. 153, 216]. On December 26th, 1919, it again applied for an increase in its rate schedule [R. 235] and the Commission advanced the base fare from six and one-half cents to seven cents flat [R. 234, 244]. On March 31st, 1924, at the Company's request, the Commission [on May 26, 1924] authorized a further increase of the base fare to seven and one-half cents [R. 249, 274], and on August 1st, 1927, it filed an application for permission to increase its base fare to ten cents [R. 15, 89], which was one hundred per cent. more than it had charged prior to October 1st, 1918, and 33⅓ per cent. more

than it had been allowed to charge from March 31st, 1924, until it filed that application, and in connection with that request it alleged an apprehended financial crisis, and urged that it be allowed to put the increase in effect immediately as an emergency measure pending any hearing that might be had on its application for a permanent increase of its base fare to ten cents. The application for an emergency rate was denied, but on Feb*ruary 10th, 1928, the Commission passed an order [R. 57] which denied the application for an increase of the base fare to ten cents, but which permitted the Company [*R. 1624]

"to charge and **collect for the transportation of persons over its several street railway lines, in Baltimore City and vicinity, a base rate fare of eight and one-third cents when tickets or fare checks are purchased, or nine cents cash, for the conveyance of each passenger over twelve years of age, and five cents for each child between the ages of four and twelve years, between any of the points designated in the schedule of the said Company filed with the Commission pursuant to the requirements of the Commission's order No. 8240 entered in Case No. 1682 on May 26th, 1924, or between the intermediate points, in either direction, on any of such lines, except in so far as the zones on any of the said lines are hereinafter modified or changed. That the first fare zone on the Halethorpe line be and it is hereby extended to the terminus of the said line at Halethorpe, effective from and after midnight of February 12th, 1928." [R. 58.] [**155 Md. 577]

The Company, being dissatisfied with that order, on March 13th, 1928, filed, in Circuit Court No. 2 of Baltimore City, a bill of Complaint in which it asked that that order be nullified in so far as it or any previous order of the Commission prevented it from charging a flat ten cent fare, or, from continuing the first and second Halethorpe zones, and it further asked that the Commission be enjoined from enforcing that order or any prior order limiting the Com-

pany's rates [R. 5]. The Commission answered, the case was set down, evidence offered by the Commission, the Company and intervening persons interested in the matter, and after argument submitted for decree, and on May 11th, 1928, a decree was filed vacating the order in so far as the same purports to limit the rates of the plaintiff; except, however, as to that portion of said order which extended the first fare zone on the Halethorpe line to the terminus of said line at Halethorpe, as to which latter provision in said order "the bill of complaint is hereby dismissed," and enjoining the defendants from enforcing that or any other orders of the Commission in so far as they limit or purport to limit the rates of fare to be charged by the Com-
[*R. 1625] *pany [R. 85]. From that decree the Company and the Com-**
[**155 mission appealed [R. 88, 87], the Company on the ground
Md. 578] that the Court erred in abolishing the second zone on the Halethorpe line, and the Commission, on the ground that the Court erred in vacating so much of its order as affected the rate of fare to be charged by the Company, and in enjoining it from enforcing such order.

It may be noted that the relief granted in the decree is not precisely that prayed in the bill. The Commission by its order did three things: it refused the Company's application for a ten cent fare, it fixed an eight and one-third cents fare, and it consolidated the two Halethorpe zones in one. The appellee in its bill, asks that all orders of the Commission which limit its rates or prevent it from charging a ten cent fare be set aside, and that the Commission be enjoined from enforcing any such orders. The decree does not refer to a ten cent fare at all, but vacates all orders of the Commission, so far as they purport to limit the "rates of the plaintiff," and it based that ruling upon the Commission's "election" not to have the case remanded to them. But the Court clearly had no right to fix the Company's rates, since its function was judicial and confined to determining whether the order of

the Commission was valid or invalid, and if in its judgment the action of the Commission was unlawful it should have remanded the case to the Commission for such further action as might be appropriate, for even if in fact the eight and one-third cent rate allowed was inadequate to allow the Company a fair return on the value of its property, that fact did not oust the jurisdiction of the Commission to fix the Company's rates nor did it authorize the Court or the Company to fix them, for under the statute the power to do that is in the Commission alone. *Gregg vs. Public Service Commission,* supra; *Chenoweth vs. Public Serv. Com.,* 143 Md. 626; *Havre de Grace Bridge Co. vs. Public Service Commission,* 132 Md. 24, Code Art. 23, Sec. 375. But as the decree reads, it not only vacates the order of the Commission of February 10th, 1928, but in effect all other orders, affecting the Company's rate schedules, and it therefore either terminates this proceeding entirely** and leaves the Company free to file a new application for increased rates, or it leaves the question of rates altogether at the discretion of the Company. *But neither of those alternatives was authorized by anything in the statute, but if the order was invalid because it was unfair, confiscatory, unlawful or for any reason, it should have been vacated and the case remanded to the Commission for further proceedings in accordance with such guides, rules, and standards, as the Court might by appropriate order or decree direct.

[**155 Md. 579]

[*R. 1626]

The central dominating question presented by the appeal, is whether the schedules of rates promulgated by the Commission, is insufficient to yield such an income as will give to the Company a fair return on the value of its property. In the argument of the case it was said that the Commission had limited the Company to a return of 6.26% on the value of its property, but the order did not so state. What it did do, was to fix a schedule of rates, which after deducting the allowances approved by the Commission for maintenance, replacement, operation, financing and other expenses, would

yield that return, but if more efficient or economical management resulted in a larger net return there was nothing in the order to prevent the Company from retaining the benefit of that saving, even though it increased its net earnings to more than 6.26% of the value of its property. So that the question actually is, whether a schedule of fares which after deducting all reasonable and proper expenses for the management and operation of the Company permits it to earn a net return of 6.26% on the value of its property, is confiscatory within the meaning of the State and Federal Constitutions, or, unlawful and unreasonable within the meaning of the Statute creating the Commission. To that question there are various approaches, all differing in some degree in the effect they have upon the meaning and weight of the facts of the case.

It may be approached from the Company's point of view, in which case the Commission's function would be largely administrative, and the ultimate determination of the pro-
["155 Md. 580] "priety of its rates would rest with the Company, and the sole test of the lawfulness of such rates would be whether they were fair to it, and would yield what in its judgment was a proper return on the valuation of its property.

['R. 1627] 'It may be approached from the standpoint of the patrons of the service, in which event the power of the Commission to fix the rates would be bounded on one side by the rule that the rates must in no event exceed the value of the service and on the other by the rule that so long as the rates did not exceed the value of the service the Company was entitled to a fair return on the value of its property. Then there is a third approach, in which the question is viewed from the standpoint of the State, in which case, factors which from the standpoint of the public or the corporation have varying weights, such as the nature and necessity of the service, the effect of its continuance or withdrawal, both upon the security holders of the corporation, and upon

property values, and the welfare of the people in the territory served by it, the extent to which the State itself is a partner in the enterprise, and the circumstances and conditions under which the Company acquired and exercises its franchises and privileges may become of paramount and controlling importance, and in our judgment the question must be approached from that direction.

Before dealing specifically with it however, we will refer briefly and generally to the powers, functions and duties of the Commission, to the extent of its jurisdiction and to the weight to be given its decisions. That the power committed to the Commission is legislative in character, notwithstanding that the manner in which it is exercised is forensic, is no longer open to question, (*Gregg vs. Pub. Serv. Com.* supra; *Chenoweth vs. Pub. Ser. Com.* supra,) and except where limited by the statute itself or some constitutional provision the acts of the Commission done in the exercise of its statutory powers are entitled to the same weight which would be given a direct act of the legislature. *Knoxville vs. Knoxville Water Co.*, 212 U. S. 8; *Pub. Serv. Commn. vs. Byron*, 153 Md. 464.

"There has been and is some uncertainty as to the extent to which courts will go in reviewing the conclusions and decisions of such administrative agencies as the appellant. In *Interstate Commerce Commission vs. Union Pac. R. R. Co.*, 222 U. S. 541, in reviewing an order of that Commission, it was said: ["155 Md. 581]

> *"'There has been no attempt to make an exhaustive statement of the principle involved, but in cases thus far decided, it has been settled that the orders of the Commission are final unless (1) beyond the power which it could constitutionally exercise; or (2) beyond its statutory power; or (3) based upon a mistake of law. But questions of fact may be involved in the determination of questions of law, so that an order, regular on its face, may be set aside if it appears that (4) the rate is so low as to be confiscatory and in viola- ["R. 1628]

tion of the constitutional prohibition against taking property without due process of law; or (5) if the Commission acted so arbitrarily and unjustly as to fix rates contrary to evidence, or without evidence to support it; or (6) if the authority therein involved has been exercised in such an unreasonable manner as to cause it to be within the elementary rule that the substance, and not the shadow, determines the validity of the exercise of the power. * * *

"In determining these mixed questions of law and fact, the court confines itself to the ultimate question as to whether the Commission acted within its power. It will not consider the expediency or wisdom of the order, or whether, on like testimony, it would have made a similar ruling. 'The findings of the Commission are made by law *prima facie* true, and this court has ascribed to them the strength due to the judgments of a tribunal appointed by law and informed by experience.' *Illinois C. R. Co. vs. Interstate Commerce Commission,* 206 U. S. 441, 51 L. ed. 1128, 27 Sup. Ct. Rep. 700. Its conclusion, of course, is subject to review, but, when supported by evidence, is accepted as final; not that its decision, involving, as it does, so many and such vast public interests, can be supported by a mere scintilla of proof, but the courts will not examine the facts "further than to determine whether there was substantial evidence to sustain the order."

["155 Md. 582]

While in the later case of the *Ohio Valley Water Co. vs. Ben Avon Borough,* 253 U. S. 289, where the Supreme 'Court of Pennsylvania held that where there was substantial evidence to support them, the findings of the Public Service Commission would not be reviewed on appeal, the Court in reversing that decision said:

['R. 1629]

"The order here involved prescribed a complete schedule of maximum future rates and was legislative in character. * * * In all such cases, if the owner claims confiscation of his property will result, the state must provide a fair opportunity for submitting that issue to a judicial tribunal for determination upon its own independent judgment as to both law and facts; other-

wise the order is void because in conflict with the due process clause, 14th Amendment. * * *."

The question came before this Court and was decided in *Public Serv. Comm. vs. Byron*, supra, in accordance with the views expressed in *Interstate Commerce Com. vs. Union Pac. R. R. Co.*, supra. In that case, speaking through JUDGE PARKE, it was said:

> "The first rule is that the order will not be disturbed except upon clear and satisfactory evidence that it is unreasonable or unlawful. This is a legislative mandate which is reinforced by the fact that the commission is a tribunal erected by law, informed by experience, and assisted by a trained corps of subordinates. Code, art. 23, sec. 408; *Public Service Commission vs. North. Cent. Ry. Co.*, 122 Md. 355, 388, 391, 392; *Havre de Grace Bridge Co. vs. Public Service Commission*, 132 Md. 16, 24; *Interstate Commerce Commission vs. Union Pac. Ry. Co.*, 222 U. S. 541."

And that statement of the rule is not only supported by the weight of authority (see discussion in Dickinson on Administrative Law), but is required by the Statute itself, (Code, art. 23, sec. 408,) and appears to be indicated by the very nature and necessity of the thing for reasons pointed out by JUDGE PARKE in *Pub. Serv. Commn. vs. Byron*, supra. It is true that in *Ohio Valley Water Co. vs. Ben Avon Borough*, supra, the court "said that where the issue of confiscation 'was raised the due process clause of the 14th Amendment required that provision be made for submitting that question to some judicial tribunal authorized to adjudicate it upon its "own independent judgment as to both law and facts"; and that expression is consistent with the theory that in reviewing the decision of an administrative agency the court would review the facts as in an equity case. But such a conclusion is inconsistent with all prior decisions of the Supreme Court, and while in *Bluefields Water Works Co. vs. Pub. Serv. Commn.*, 262 U. S. 689, it was again stated that upon the question of confiscation the utility was en-

["155 Md. 583] ['R. 1630]

titled to the "independent judgment of the court as to both law and facts," it is not thought that by that language, the court in either of those cases, meant to say anything more than that where the facts are undisputed or must be taken as established, and the inference to be drawn from them inevitable, the courts will review any conclusion of law predicated upon such facts. But we do not believe that it was intended to overturn the policy established by the decisions of that court, and by many state and federal statutes which commits to such agencies as public service commissions the ascertainment of facts which rest in conflicting evidence, and we find therefore no inconsistency between the language quoted from those opinions and the language of this Court in *Public Serv. Commn. vs. Byron,* supra. And we feel too that in dealing with the constitutional question involved in confiscation some weight must be given to the statute, which places upon the person attacking the decision of the Commission the burden of establishing its unlawful or unreasonable character by "clear and satisfactory proof." *Pub. Serv. Commn. vs. Byron,* supra.

Reverting now to the main question presented by the appeal, the first inquiry is whether a schedule of rates which permits the appellee to earn 6.26% on the fair value of its property can be said to be confiscatory within the meaning of that clause of the 14th Amendment of the Federal Constitution which denies to the states the power of
["155 Md. 584] "depriving any person of his property without due process of law. Confiscation, in that sense, is essentially a relative, and not an absolute term, and it does not exist apart from the facts which are said to occasion it. No fixed or general rule can be announced by which it can be deter-
["R. 1631] "mined whether it exists in any given case, because whether it exists or not must be determined from factors which vary with the facts of each case, since rate cases like wills seldom have "twin brothers." *Covington & L. Turnpike Company vs. Sanford,* 164 U. S. 592 et seq., and we know of no

authority for the proposition that public utilities without regard to circumstances or conditions are entitled to a return of any given amount of percentage on the value of their properties. For while there are cases which hold that such utilities are entitled to a return of six or seven or eight per cent. on the value of their properties, they have no controlling weight, because the decisions are uniformly found to be based upon facts peculiar to the several cases. So in this particular case, in deciding whether the schedule of rates prescribed by the Commission, is confiscatory, we must be guided by the facts of this case, and are little aided by what this court or some other court may upon different facts have found to be lawful or confiscatory, fair or unreasonable rates.

To attempt to analyze in detail the mass of factual and opinion evidence adduced before the Commission is neither practicable nor necessary, since such facts as are relevant to the question before us rest for the most part in records of the Company or the Commission and are not in dispute, and we will at this time only refer to such as are necessary to indicate the contentions of the parties.

The total value of the Company's property including easements may be placed at $75,000,000. That was the valuation placed upon it by the Commission in [as of] 1924, and while there was some dispute as to whether that figure should not be increased to include additions since the valuation, that contention was not stressed in this court, but was treated as a matter of detail which could be adjusted to fit the facts at** some future time, so that the figure of $75,000,000 may be treated as the true value of the Company's property for all the purposes in this case. [**155 Md. 585]

The financial structure of the Company appears from the following tabulation in which the "basic value" of its property is assumed to be $70,000,000 [R. 335, 356], the

value placed upon it by the Commission exclusive of the value of the easements which has been fixed at $5,000,000;

[*R. 1632]

Class of Securities	Outstanding 12/31/1926	Per cent of basic value	Outstanding 6/30/1927	Per cent of basic value
Mortgage Bonds	47,405,000	67.7	47,405,000	67.7
Miscellaneous Obligations	6,392,700	9.1	7,664,200	10.9
Income Bonds	13,977,000	20.0	13,977,000	20.0
Total Bonds and Miscellaneous Obligations	67,774,700	96.7	69,046,200	98.7
Stocks	20,461,200	29.2	20,461,200	29.2
Grand Total	88,235,900	126.0	89,508.400	127.9

[People's Counsel Exhibit No. 4. R. 1473.]

And it appears that the Company has for some time past been paying, and still pays, dividends on its common stock at the rate of 4%, and that that stock, having a par value of $50 per share, has in late years sold on the Baltimore Stock Exchange at prices ranging from $16 to $21 per share [R. 556], and it further appears that its mortgage bonds bought at current market prices yield the purchaser a return of about 6%. From time to time since 1911, the Company has had occasion to borrow for varying periods, and the rates at which this money was bought, as shown by the following tabulation, throws some light upon the changes in its credit:

Issued	Description	Amount	Proceeds	Rate received	Interest rate
1911	2nd Half 3 Year Notes.....	$3,125,000	$3,046,876	97½	5%
1914	2nd Half 10 Year Car Trust Certificate	153,000	153,000	100	6%
1914	2nd Half 2 Year 5% Collateral Trust Notes	1,000,000	995,000	99½	5%
1914	2nd Half 1st Mtge. Gold Sinking Fund Bonds (Md. Elec. Rys.)...	489,000	469,440	96	5%
1916	Feb. 5 Year 5% Gold Notes.....	2,750,000	2,695,000	98	5%
1917	Oct. 6% Convertible Gold Notes..	3,000,000	2,850,000	95	6%
1919	5 Year Convertible Notes....	1,528,000	*	*	5%
1917	1st Mtge. Gold Bonds (Md. Elec. Rys.)	457,000	447,860	98	5%
1920	2nd Half Car Trust Certificates—Series 1920 (10 Years)	875,000	831,250	95	8%
1921	Feb. 7½ Coupons Gold Notes.....	1,500,000	1,383,750	92¼	7½%
1922	Apr. 1st Consol. Mort. 50 Year Gold Bonds	6,000,000	5,550,000	92½	6%

[*R. 1633]
[**155 Md. 586]

Issued		Description	Amount	Proceeds	Rate received	Interest rate
†1922		1st Consol. Mort. 50 Year 6% Gold Bonds	6,000,000	5,500,000	92½	6%
		In lieu of 4% Bonds ($2,684,000 @ $250 per Bond)		671,000		6%
1922	July	5 Year 6% Gold Notes.....	2,500,000	2,375,000	95	6%
1924	1st Half	1st & Refunding Gold Bonds Ser. A. (Md. Elec. Rys.)..	4,000,000	3,790,000	94¾	6½%
1927	July	3 Year Notes.....	2,500,000	2,412,000	96½	6%

[People's Counsel Exhibit No. 6. R. 1475.]

[**155 Md. 587]

**From another table filed by People's Counsel it appears that the net income of the Company, for the years from 1920 to 1926 inclusive was as follows:

1920—1,043,599.21 1921—{[635,230.58] 735,230.58 1922— 799,268.99 1923—976,266.38

1924— 976,068.39 1925— 980,609.53 1926—1,010,054.41

and that for the same period the operating income was:

1920—17,313,589.84 1921—16,332,865.34 1922—16,122,592.02

1923—16,461,798.86 1924—16,453,254.31 1925—16,621,220.20

1926—16,715,709.07

[People's Counsel Exhibit No. 12. R. 1496.]
[†This item is a duplication in the opinion.]

*Another tabulation filed on behalf of the people indicated the following ratio of funded debt to track operation per mile, and gross revenue per dollar in a number of American cities: [*R. 1635]

	Funded debt and income bonds	Funded debt per mile of track operation	Funded debt per dollar gross revenue
Baltimore	67,774,700	164,000	4.05
Without Income Bonds	53,797,700	130,000	3.22
Detroit	35,155,000	88,000	1.63
Los Angeles	19,852,000		1.64
San Francisco	11,695,000	42,600	1.19
Pittsburgh	34,215,000	57,700	1.57
Boston	49,819,000	100,200	1.41
Cleveland	5,495,000	13,310	.30
St. Louis	52,590,000	120,900	2.80
St. Paul, Minn.	19,478,000	38,700	1.40
Buffalo	25,392,782	62,200	2.47
Providence	13,714,000	47,200	1.61
Washington	5,606,000	77,000	1.21
Cincinnati	5,288,400	19,840	.65
Indianapolis	13,497,517	56,300	2.35
Denver	10,863,500	48,900	2.38

[People's Counsel Exhibit No. 5. R. 1474.]

Still another table showed the current rates of fare, rate of return, and base in twelve representative American cities comparable in size to Baltimore, to be as follows:

[**155 Md. 588]

**	Rate of return	Base	Fare
Baltimore (New Fare)	6.26	$75,000,000	9c— 3 for 25c
Boston	4.64	159,025,142	10c— 4 for 25c (limited)
Chicago Surface Lines	6.27	164,600,000	7c— 3 for 20c
Cincinnati	4.16	36,381,017	10c— 3 for 25c
Cleveland	4.35	37,106,506	7c— 8 for 50c
Kansas City	1.82	23,300,000	8c—15 for $1.00
Los Angeles	3.06	54,000,000	5c
Philadelphia [5.97]	5.07	216,000,000	8c— 2 for 15c
Pittsburgh	5.85	68,170,000	10c— 3 for 25c
St. Louis	4.66	52,024,192	8c— 2 for 15c
San Francisco	5.37	35,000,000	5c
Washington	4.69	50,000,000	8c— 6 for 40c

[People's Counsel Exhibit No. 25. R. 1517.]

And another table [People's Counsel Exhibit No. 24. R. 1511-1516] lists seventy-nine American cities each having a
[*R. 1636] popula*tion of over 100,000, and shows the population of each city, the rate of fare charged on the street railways, and commutation privileges, established in connection with such fares in each city. In analyzing that table Mr. H. Carl Wolf, engineer for the Commission, testified:

"Of the 81 cities listed as having a population of 100,000 or more, only 19 of them have a fare higher than Baltimore. There are 30 cities with a ten cent fare. Only one of these has a straight ten cent fare with no tokens. Ten of them, or one-third the number have an eight and one-third cent token fare, six of them have an eight and one-third cent token fare, plus a pass system, one of them has a seven and a half cent token fare, plus a pass system, and when the Commission recalls that at the present time 97% of the full fare passengers in Baltimore are using the token fare they will see that the ten cent-seven and a half cent fare, plus a weekly pass, if applied to Baltimore, would cause practically no increase in fare, and probably a decrease.

There is one of these 30 cities with a ten cent fare which has not a token fare but which does have a pass, and 11 of them with ten cent fares charge 7½c or lower for tokens with no passes." [R. 1016.]

[**155 Md. 589] **And in criticising that analysis Mr. C. D. Emmons, president of the Company, said:

"I have this from the late bulletin; that the trend of fares over the United States has been upward since July 1, 1923, and is continuing upward. On October 1, 1927, the average fare of 272 cities reporting was 7.9516 cents and November 1, 1927, the average fare was 7.9846 cents, which is the highest average fare that the street railway industry has ever had, not excluding the War period.

There are at the present time, or since the November bul-

letin, there have been twelve different cities that have changed the rate of fare. There are three interurban roads that have changed the rate of fare. At the present time there are fourteen fare cases pending.

Q. What are the direction of those changes?

A. The changes are all up with the exception of a municipal city which has put in a weekly pass, and the information here does not say about the flat fare. I presume it's the same, a flat fare with a weekly pass. I think they give *a [*R. 1637]
statement that there are only, I have forgotten, of basic 10c fare cities, but my statement here is that there are—I got this morning, dated November 26th, from New York—this gives 219 United States cities.

Q. Having a basic fare of 10c?

A. That's right, yes.

(Mr. Tingley): Those are not cities of over 100,000?

(The Witness): No, but I counted the cities of over 100,000 in this and there are 31 cities of over 100,000 that have a basic 10c fare. * * * [What follows, in answer to *subsequent* questions, is a list of *30* cities (of *over or under* 100,000), *including Boston,* that have a *flat* 10c fare, "without any tickets at all except maybe like Boston as those from local lines of 4 for 25c, but they are not down in the city, and to my mind do not exclude Boston in any way from the flat 10c cities."]

(The Witness): [Berwyn, Illinois;] Cicero, Illinois, 65,400; Forest Park, Illinois, 10,768; Maywood, Illinois, 12,072; Oak Park, Illinois, 53,500; Auburn, Maine, 16,985; Bangor, Maine, 25,978; Bath, Maine, 14,731; Lewiston, Maine, 35,500; Billerica, Massachusetts, 3,646; Boston, Massachusetts, 787,000; Braintree, Massachusetts, 10,580; Concord, Massachusetts, 6,461; Framingham, Massachusetts, 17,033; Holyoke, Massachusetts, 60,400; Lexington, Massachusetts, 6,-

["155 Md. 590]

350; Natick, Massachusetts, 10,907; Needham, "Massachusetts, 7,012; Newburyport, Massachusetts, 15,618; Newtonville, Massachusetts, 5,700; Wakefield, Massachusetts, 13,025; Waltham, Massachusetts, 35,700; Wellesley, Massachusetts, 6,224; Woburn, Massachusetts, 16,574; Worcester, Massachusetts, 193,300; Morristown, New Jersey, 12,548; Ocean City, New Jersey, 3,721; Lackawanna, New York, 17,918; Mauchnuck, Pennsylvania, 3,666; West Chester, Pennsylvania, 11,717. • • •

(Mr. Clark): How many states now have you cited there?

(The Witness): Six states." [R. 1120-1122.]

From other tables it appears that the wages of "platform" men have increased from a maximum of 22c an hour in 1913 to a maximum of 53c an hour in 1926 [1927], [Company Exhibit No. 15. R. 1413], that other wages showed an approximately similar increase [Company Exhibit No. 16. R. 1414-1416], and that during the same period the general cost of living showed an increase from a base index of 100 to an index of 173. [Company Exhibits Nos. 20, 29. R. 1420, 1460.]

Perhaps the most significant fact connected with the question before us is the decline in the number of revenue passengers carried by the Company from 253,834,179 in 1919

*R. 1638]

to 225,225,633 in 1926, and 145,256,760 (August ap*proximated) for eight months of 1927. [Company's Exhibit No. 2. R. 1388-1389. *Cf.* Company's Exhibit No. 13, R. 1409-1411, showing 10,000,000 of this decrease was *not* decrease in *passengers* but decrease in fares due to zone extensions in 1924.] Coincident with that decline was a gradual increase in the rates of fare from 5c prior to 1919 to 7½c in 1927, and an increase in the registration of automobiles [in Maryland] from 85,430 in 1919 to 267,649 in 1926. [Company Exhibit No. 11. R. 1406.]

In connection with those figures a further fact appears

which is that while the total number of revenue passengers is decreasing, the peak load of passengers that is the greatest number of passengers carried during the "rush hours" each day has increased, and to accommodate that increasing demand, it has become necessary for the Company to maintain an increased equipment which is to some degree idle during a part of the day. [R. 712, 1244.]

One of the contentions made by the Company was that the existing rates so affect its credit that it is compelled to pay unreasonably high rates for money, and in connection with that contention it filed a table showing the rates it has paid since 1920, which in part shows:

[*155 Md. 591

Date of Issue	Amount of Issue	Less Banker's Commission	Cost of Money to Company	Market Price
July 1, 1920 Car Trust 8% Gold Certificates	875,000	43,750	9¾%	100
Jan. 15, 1921 Ten Year, 7½% Gold Notes	1,500,000	90,000	8.70%	98¼
Mar. 1, 1922 First Consolidated Mortgage, 6s, due March 1, 1949	6,000,000	270,000	6.75%	97
Mar. 1, 1922 Deposit $250 per $1,000 bond by holders of $2,684,000, First Consolidated Mortgage 4s to secure additional 2% interest coupons	671,000	28,903	6.60%	—
Aug. 1, 1922 Five Year, 6% Gold Notes	2,500,000	75,000	7.27%	98
Jan. 1, 1928 Maryland Electric Rwys. Co. First and Refunding Mortgage Gold Bonds; Series "A"—6½% due Jan. 1, 1957	4,000,000	210,000	6.93%	100
Mar. 1, 1927 Three Year, 6% Gold Notes	2,500,000	62,500	7.32%	99¼

[Company Exhibit No. 31. R. 1462.]

These facts are but a small part of those to be found in the mass of evidence contained in the record, but they are sufficient to indicate the grounds for the conflicting contentions of the parties to this appeal, which as we understand them are in substance as follows:

[*R. 1639] *In respect to the main question the appellant appears to contend that the schedule of fares promulgated by the Commission, is, under existing conditions, all that the service is worth, and fair alike to the Company and the public, but, that whether fair to the Company or not no higher rates should be allowed, because the Company is only entitled to collect from the public the value of the service it renders.

[**155 Md. 592] The contention of the Company on the other hand seems to be that it is entitled to earn a fair return on the value of** its property, that "fair return" means a return of at least 8% on the value thereof, and that it is entitled to a schedule of rates high enough to insure that return regardless of the value of its service to the public. Or reduced to its lowest terms, and quoting its own language the Company's proposition is, that "compulsory limitation of the Company's rates to yield a maximum of less than eight per cent. is confiscatory and unlawful," while the Commission contends that "rates must in no event exceed the value of the service, regardless of return or confiscation," and somewhere between those extreme theories lies the law.

Manifestly the proposition submitted by the Company is broader than the law while that of the Commission is too indefinite and vague to be of much aid in settling the question before us. There is so far as we know no rule of law which guarantees to public service corporations the right to earn eight per cent. on the value of their properties regardless of the fairness of their rates to the public or of any other fact or circumstance, but the law as stated in *Covington & L. Turnpike Co. vs. Sandford*, supra, is to the contrary, there it is said (page 596): "It is proper to say that if the answer had not alleged, in substance, that the tolls prescribed by the act of 1890 were wholly inadequate for keeping the road in proper repair and for earning dividends, we could not say that the act was unconstitutional merely because the Company (as was

alleged and as the demurrer admitted) could not earn more than 4% on its capital stock. It cannot be said that a corporation operating a public highway is entitled, as of right, and without reference to the interests of the public to realize a given per cent upon its capital stock. When the question arises whether the legislature has exceeded its constitutional power in prescribing rates *to be charged by a [*R. 1640
corporation controlling a public highway, stockholders are not the only persons whose rights or interests are to be considered. The rights of the public are not to be ignored. It is alleged here that the rates prescribed are unreasonable and unjust to the company and its stockholders. But that involves an inquiry as to what is **reasonable and just for [**155
the public. If the establishing of new lines of transportation should cause a diminution in the number of those who need to use a turnpike road, and, consequently, a diminution in the tolls collected, that is not, in itself, a sufficient reason why the corporation, operating the road, should be allowed to maintain rates that would be unjust to those who must or do use the property. The public cannot properly be subjected to unreasonable rates in order simply that stockholders may earn dividends." Nor is there any rule by which we may precisely determine what is the actual value to the public of such service as that which the Company sells. Md. 593]

When the Company speaks of a "return of not less than eight per cent." on its property it must be remembered, that nearly $68,000,000 of its actual value, is covered by bonded indebtedness or other obligations bearing a fixed rate of interest far below that rate, and that the balance of the eight per cent. return remaining after paying that interest would go to the holders of stock having a par value of $20,461,200, the real value of which is seven million dollars, if the easements are valued at $5,000,000 or $2,000,000 if they are excluded which would necessarily be greater than an eight per cent. return on the value of that stock. But

aside from that, and assuming that the rate schedule will yield less than eight per cent. on the actual value of all the Company's property, or even less than eight per cent. on the actual value of the stock, that fact alone cannot characterize it as confiscatory, but other factors must be considered.

It is argued that an eight per cent. return is necessary to enable the Company to borrow money at reasonable rates, and that the fact that it is limited to a rate schedule which will yield a return of only 6.26% puts it at a disadvantage as a borrower and weakens its credit. But the evidence fails to support that contention. It is true that there is in the
[*R. 1641] record a mass of subjective and highly conjectural tes*timony pro and con relating to it, much of which tends to support the Company's contention, but, whilst its useful-
[**155 Md. 594] ness may be conceded, the speculative opinions of ex**perts who are themselves interested in increasing the rate of return on similar utilities cannot be substituted for the judgment of the Commission, and accepted as a conclusive determination of the question, at least where the judgment of the Commission is based upon substantive evidence.

The value of such securities as the obligations of public utility companies depends in the main upon the security they offer as well as the rate of return which they will pay the investor. And it is quite as reasonable to assume that the fact that the ratio of the Company's funded debt to the value of its property, is as the Commission found approximately 90%, affects its credit, as the fact that it can only earn 6.26 on the value of its property.

In connection with that contention the Company asserts that the use of the automobile for the transportation of those who otherwise would use its lines has increased to such an extent, that it has reduced its net revenue to such a point, that any rate schedule indicating a return of less than 8% on the value of its property impairs the security offered

investors, and lessens the confidence of the public in its financial stability, and that therefore it is entitled as of right to a schedule which will insure such a rate of return regardless of its effect on that part of the public who for one reason or other are obliged to use its lines. But, if as the Company contends, it is required to pay more for its money because of the risk resulting from the increasing competition of the private automobile, it certainly cannot expect to correct that condition by raising its rates to such a point that investors will purchase its stock as a gambling or speculative venture. Nor in fact do we see any occasion for the gloomy outlook of the Company's witnesses. It appears to be well and economically managed, and the market price of its securities indicates continued public confidence in its stability, as well as in its ability to liquidate its obligations, when and as they accrue, and from the volume of its business there is little likelihood that it will cease to be a highly productive property not only useful but essential to the city's welfare and the public convenience, and profitable to its owners, provided "sufficient 'allowance is made for keeping its property from depreciating. ["155 Md. 595] ['R. 1642]

There seems to be no question but that the private automobile is a serious competitor of the Company, and it is estimated that it carries about twenty-five per cent. of those who would but for it use the street cars, and it is possible that it may make further inroads on its business, regardless of rates. In fact the Company rather repudiates the idea that rates have any substantial effect upon the volume of its traffic, but attributes its decline almost entirely to the automobile, although as a matter of common sense there must be some substantial relation between transportation rates and the volume of traffic. But irrespective of that the Company's contention ignores one very important if not controlling consideration, and that is that it is a "public" service company, and that practically speaking the substantial value of all its property is due primarily to franchises and

privileges which it has secured from the State, upon the condition, express or implied but always present, that it will give in return adequate service at reasonable rates. Those privileges include not only the right to do business and operate its lines over public highways, but also protection against any other agency offering to perform the same service in the same territory. So that when the Company contends that since conditions which neither it nor any one else can control, increase the expense of its service, that it should be permitted not only to transfer that entire burden to that part of the public who must of necessity use its lines, but to also increase its net earnings beyond a point they have ever reached, it ignores the very patent fact, that if the State withdrew from it the protection from competition by other public service companies offering the same service, which it now enjoys, its very existence would be threatened. The mere fact therefore that increasing automobile competition has made it more expensive for the Company to serve those who do use its lines, while it justifies increasing its rates to a point which will absorb the increased expense, affords no excuse for still further increasing them to a point which will not only be burdensome to the "traveling public but will at the same time yield to the Company a greater return than it has 'ever received, and greater than that usually received by others operating in the same field elsewhere under substantially the same conditions.

["155 Md. 596] ['R. 1643]

Whether a given rate is burdensome to the public, involves the question of the value of the service, and presents an extremely difficult and troublesome question, the answer to which, except in extreme cases, can only rest in the judgment of the Commission operating upon varying factors each of which is entitled to some weight, but no one of which ordinarily is controlling.

One consideration suggested is the diminished purchasing value of the dollar, the increase in wages, and the fact

that wages have risen higher than the cost of living, on the theory that as the public has more money to spend, it suffers no hardship if it is required to spend more, and that by judicious management it may for that reason be brought from a five cent to a ten cent state of mind without any serious physical or mental disturbance or inconvenience. But while that theory may have a certain appeal for the Company, it is too refined and delicate for general and practical use, and although it might have a material and substantial relation to the operating expenses of the Company, it has no apparent relation to the value of its service. The fact that it cost one man three dollars to grow a bushel of wheat is no reason why a purchaser should be compelled to pay him three dollars for it, if in fact, measured by the market it is only worth two, and ordinarily the affluence of the buyer has no perceptible relation to the value of the product of the seller. Whilst not strictly analogous, recent developments in the ice business tend to illustrate the fallacy of that contention. It is a matter of general knowledge that the manufacture and sale of machines for artificial refrigeration, and the manufacture of ice in homes, has had a serious effect on the artificial and natural ice business as formerly conducted. But assuming that the ice business is a public utility and its rates subject to regulation, it would be manifestly unreasonable to allow an ice company to charge to its patrons the losses it "had suffered from the inroads of competitors, by requiring them to pay rates high enough to absorb these losses. ["155 Md. 597]

Another factor suggested is that a decrease in the volume of traffic indicates that the rates are burdensome, and 'there is some force in that suggestion, but the difficulty in this case lies in attributing the decline to the increase of fares. So far as the facts go, it may be due either to that or to the increasing use of the automobile. Whether it is due to one or the other is a matter of unguided conjecture. For while there is in the record a confused mass of contradictory fig- ['R. 1644]

ures relating to the effect of increased rates on the volume of traffic, it is impossible to deduce from them any definite or sound conclusion.

Nor can the value be determined by comparison, by the market, or by what it would cost an individual to obtain by a privately owned agency the same service. There is no other public agency rendering the same service with which the company can be compared, for it is protected in a monopoly, and for the same reason there is no general market by which the value of its service can be ascertained, nor would it be reasonable to measure its value by what it costs the owner of an automobile to operate it so as to give like service, because of the difference in machines and in the expense incident to their operation, and because there is no fair comparison between the operation of a private automobile and a public service corporation operated as a monopoly and for profit. So that in determining whether the rates fixed by the Commission are confiscatory we are finally remitted to a few simple realities, such as the past earnings of the Company, the returns usually received by other companies engaged in the same business in other fields under somewhat similar conditions, the rates which the Company has voluntarily fixed for its service in the past, the decrease in the purchasing power of the dollar, and the effect which other orders of the Commission have had upon the earning power of the Company.

It may be assumed that the base fare prior to the formation of the Commission was reasonable because up to that time no complaint had been made of it by the Company and "in 1900 it was fixed by an act of the Legislature, which has never been challenged. The fare then was five cents which would be approximately equal to 8⅓ cents today when the decreased purchasing value of the dollar is considered, and if that were all the question would be free from difficulty, for if 5 cents was fair then the equivalent

"155 Md. 598]

of the value which five cents had then should be fair now. *But there are other factors which affect it, such as the extension of the city fare zone so as to embrace all the new territory brought into the city by the Annexation of 1918, the effect of which was to relieve a part of the public of the burden of an extra fare possibly at the expense of the Company and certainly of the remaining part of the public, and also the fact that certain of the operating expenses of the company such as the cost of labor increased in a ratio greater than that in which the purchasing power of the dollar declined, for although speaking generally the dollar now will purchase perhaps sixty per cent. of what it would in 1913 it will not purchase as much as fifty per cent. of the labor which the Company could have bought with it then. [*R. 1645]

But these factors were considered fully by the Commission when it fixed the base fare at 7½ cents in 1924, and in view of that finding and of the further fact that the record does not disclose any data sufficiently specific to enable us to say that it was unlawful, we are not inclined to give them any controlling weight now, especially as the schedule fixed by the order in this case is designed to give the Company a higher return on its property than it received prior to the extensions.

It also appears that if the schedule produces the results anticipated by the Commission that the net earnings of the Company in comparison with the value of its property will be as great if not greater than at any time in so much of its history as has been called to our attention, and that it will yield a return thereon with one possible exception higher than that now received by any company engaged in the same business under conditions at all comparable to those obtaining in Baltimore and its environs, and higher, than the inter**est rate allowed by statute in this State, Code, art. 49, sec. 1. After giving due consideration to these several factors, and to Code, art. 23, sec. 408, we are unable to say that the schedule of fares promulgated by the order [**155 Md. 599]

appealed from was unlawful, unreasonable or confiscatory, which permits a return of 6.26 on the value of the Company's property, and it follows that so much of the opinion of the trial court as set aside that part of the order and enjoined its enforcement was in error. And that conclusion seems to be in accord with such authority as there is on the
[*R. 1646] subject. In the case of *Smyth vs. Ames,* 169 U. S. *545, the court expressly reaffirmed and approved the statement in *Covington & L. Turnpike Co.* supra, to which we have referred. *McCardle vs. Ind. Water Co.,* 272 U. S. 419, cited by appellee, can scarcely be considered authority to the contrary. For aside from the fact that the decision in that case was based upon facts essentially different from those in this case, it merely held upon those facts that at that time a rate of seven per cent. was not confiscatory. In respect to that question it said: "The evidence is more than sufficient to sustain the rate of seven per cent. found by the Commission." And while there is a certain ambiguity inherent in that expression, it certainly did not establish the rule that anything less than seven per cent. would in all cases have been confiscatory, and that is the interpretation placed upon it in the dissenting opinion of MR. JUSTICE BRANDEIS, where it is said: "To avoid the possibility of misunderstanding, I add merely that in my opinion the facts of record, considered in connection with those of which we have judicial notice, do not justify holding that rates which yield a return of less than 7 per cent. would be so unreasonably low as to be confiscatory." Nor is the case of *Railroad and Warehouse Commn. vs. Duluth Street Rwy. Co.,* 273 U. S. 625, in point. There the commission allowed a charge of six cents, but required the company to issue six tickets for not less than twenty-five cents. The District Court prohibited the enforcement of that rate and authorized the carrier to charge not more than six cents flat. On an appeal the Supreme Court only considered the ques-
155 Md. 600] tion of whether the District Court had jurisdiction to hear

the complaint, and the question of the reasonableness of the rates was not referred to.

There is certainly nothing in these cases nor in any other decision of the Supreme Court, which is the final authority upon the question involved in this appeal, which is in any way inconsistent with the decision of that Court in *Dayton-Goose Creek R. R. Co. vs. United States,* 263 U. S. 456, 481, in which the court through the Chief Justice in part said: "The carrier owning and operating a railroad, however strong financially, however economical in its facilities, or favorably situated as to traffic, is not entitled, as of constitutional right, to more than a fair net operating income upon the value of its properties which are being devoted to transportation. By investment in a business dedicated [*R. 1647 to the public service the owner must recognize that, as compared with investment in private business, he cannot expect either high or speculative dividends, but that his obligation limits him to only fair or reasonable profit. * * * The act fixes the fair return for the years here involved, 1920 and 1921, at 5½ per cent., and the Commission exercises its discretion to add one-half a per cent. The case of *Bluefield Waterworks and Improvment Co. vs. Public Serv. Commn.,* 262 U. S. 679, is cited to show that a return of 6 per cent. on the property of a public utility is confiscatory. But 6 per cent. was not found confiscatory in *Wilcox vs. Consolidated Gas Co.,* 212 U. S. 19, 48, 50; in *Cedar Rapids Gas-light Co. vs. Cedar Rapids,* 223 U. S. 655, 670; or in *Des Moines Gas Co. vs. Des Moines,* 238 U. S. 153. 172. Thus the question of the minimum of a fair percentage on value is shown to vary with the circumstances."

That statement has never been modified or overruled, and so far as we are advised is still the law.

Depreciation.

Assuming that a schedule of fares which will yield to the Company a return of 6.26% on the value of its property is neither confiscatory nor unreasonable as a matter of law, [**155 Md. 601] the next question is whether the schedule adopted by **the Commission in this case will in fact yield such a return. The answer to that question necessarily involves the allowance made for the depreciation of the Company's property used in the service to which it is dedicated. It is an elementary principle not only of constitutional law, but of common right, that such a Company must be permitted to earn such an income as will not only yield a fair return on the fair value of its property, but which will be sufficient to enable it to keep its property at a constant level of efficiency, so that it will be adequate for the public needs, and so that the value upon which the return is based will not be lessened. Anything more than that would be unjust [*R. 1348] *to the public, anything less than that would be unjust both to the public and to the Company. For the public should not be required to pay rates based upon the present value of the property if that value is to be permitted to steadily depreciate, nor, should the Company's property be consumed in the public service without adequate provision for restoring to it the equivalent of its value. So that the Company is entitled to such an allowance as will not only adequately provide for current repairs, but for depreciation due to necessary retirements, obsolescence, and the diminishing utility of property which cannot be arrested by repairs. So much is self-evident, is conceded by the parties to this appeal, and does not appear to be questioned anywhere. *Knoxville vs. Knoxville Water Company,* 212 U. S. 1, Rose's Notes.

The allowance made for current repairs under the head of maintenance does not appear to be questioned, so that the only inquiry is whether the allowance for depreciation

is adequate. The Commission in fixing the fare schedule allowed 5% on the gross revenue of the Company for depreciation, and estimated that that allowance would yield $883,544 in 1928 allowing for a decrease in the volume of traffic, and its opinion indicates that in reaching that conclusion it considered the cost and not the present value of the Company's depreciable property. Unquestionably there is authority for that method of calculating a proper depreciation reserve, but in our opinion it is artifi"cial, illogical and unsound, and ought not to be approved, and since we cannot say that proper methods would not have produced a result which would have affected the rate schedule adopted, the case should be remanded to the Commission in order that it may consider and determine the proper allowance for depreciation in accordance with rules hereinafter stated, and if necessary re-adjust the rate schedule to cover any changes it may make in that allowance. ["155 Md. 602]

The allowance of a given percentage on the gross income of the Company as a method for computing depreciation is said to be justified by accounting usages, but in such a case as this we are not dealing with bookkeeping customs, but with substantive rights protected by constitutional guaranties, and there seems to be no logical reason why the depreciation should not be based upon the actual value of the property itself, rather than upon vague and conjectural inferences drawn from the money the property earns. The accuracy of such a method must be largely subjective, since there is no apparent connection or relation between the income which property yields and the depreciation resulting from its use in earning that income. It is true that it is said to have been tested by more direct and intelligible methods, but if that is so such methods should have been used in the first place, and not as mere checks upon a method not justified either by law or logic. But even so, if the conclusion actually reached was proper, the fact that it was reached by improper methods, would ["R. 1649]

not justify us in disturbing it, so that the more important question is whether the base of the calculations by which it was tested was itself lawful. And that depends upon whether the Commission should have based its allowance for depreciation upon the original cost of the property, or upon its present value. It actually did use cost and not present value as the basis of its conclusion, and here again it must be said that there is authority for its procedure. But in our opinion it is justified by neither law nor right reason.

In valuing the property for rate making purposes the Commission based its conclusion upon its present value and not upon its original cost, and in fact the case of *Havre de* [**155 Md. 603] **Grace Bridge Co. vs. Pub. Serv. Commn.*, supra, left it no alternative. But if it was essential to adopt that method for ascertaining the value of the property to which the rates were applied, it is not easy to see why it should not be adopted in estimating the amount needed to replace that property when it is worn out or becomes obsolete and worthless. If the Company paid $100,000 for property now only worth $10,000, it would be grossly unfair to the public to base its annual depreciation on its cost, and if on the other hand the Company paid $10,000 for property now worth $100,000, it would be equally unfair to it to compel it to sell that property to the public at 10% of its real value. These conclusions seem to be self-evident, and while there is authority to the contrary, they are supported by the reasoning in such cases as the *Havre de Grace Bridge Co. vs. Pub. Serv. Commn.*, supra, *Knoxville vs. Knoxville Water Co.*, supra, and *Michigan Pub.* [*R. 1650] *Util. Commn. vs. Mich. St. Tel. Co.*, 228 Mich. 658, and *from the standpoint of fair play both to the Company and the public are inevitable. To require the Company to sell its service at rates which made no provision at all for the replacement or repair of the property when worn out or obsolete, would be plain confiscation, and to require it to

sell it at rates which make an inadequate provision for the return of its value when worn out or obsolete as a result of public service can be no less.

Counsel for the Commission suggest that to restore value would be to "require the financing of additions to plant, to the extent of the excess of replacement over original cost of property replaced, by the public, which would in turn have to pay a return on the capital thus required." The meaning of that suggestion is not altogether clear, but if it is that the Company is entitled to the return of any thing less than the value of its property it cannot be sustained. Money deducted from earnings to replace equipment which has become worn out or obsolete, by other equipment of the same character and the same value, adds nothing to Company's resources but merely keeps them at the same level.

"In testing the result arrived at by allowing a depreciation reserve of 5% on the gross income of the Company, the Commission appears to have been largely influenced by the history of the Company during the last few years. That is it appears to have concluded that since the Company had not actually expended its entire depreciation reserve in replacement, that it must have been sufficient. But that does not follow. The mere fact that it did not spend its entire reserve on replacements is not conclusive evidence that replacements which were not made, were not needed. For the Company may have been influenced by such considerations as the condition of the money and supply markets, whether the replacements should be postponed to harmonize with contemplated changes in equipment, or whether the maintenance of a substantial reserve was necessary to financial stability, and we do not regard that as an adequate test. But in our opinion there should have been some physical inspection of the property and investigation of the probable useful life of the property as shown by the experience of this company and other companies using simi- ["155 Md. 604]

lar property in the same way, and an estimate made based in part at least upon such an investigation of the probable
[*R. 1651] annual de*preciation. The Commission suggests that such a test could only be properly applied to accrued depreciation, but we see no force in that argument. If an inspection of equipment shows it to be in a fair condition of repair, and experience and judgment indicate that with reasonable care it should last for a reasonably certain time before becoming worthless, that would certainly seem to be a more reliable guide in determining its annual depreciation than the amount of money it earned, or, the fact that when similar equipment became worthless, the Company did not see fit to replace it.

The Company also takes sharp issue with the Commission on its policy in respect to obsolescence as an element of depreciation. It is difficult, because of the method of calculation adopted, to determine to what extent the Commission did con-
[**155 sider that question, except that it is clear that it did **not al-
Md. 605] low for extraordinary obsolescence, and in that conclusion we are in complete accord. But ordinary obsolescence is a tangible and concrete thing, for which some allowance should be made in any estimate of depreciation in such property as that operated by the Company. Experience infallibly indicates, that as a result of social or economic changes, or the progress of science and the improvement of mechanical and electrical equipment some part of the Company's property will from time to time become out of date, and unsuited to its present needs, and should be retired. Such obsolescence is really depreciation and should be considered in any fair or reasonable estimate of the probable annual depreciation of the Company's property. Extraordinary obsolescence however is quite another thing, and by extraordinary obsolescence we mean an extensive supersession of property used for the transmission or the generation of power, or instrumentalities used for the transportation of passengers. Such obsolescence has seldom occurred in the

past and whether it will occur in the future at all, or if it does when it will occur, and how extensive it will be are all matters of unrestrained speculation and conjecture, and we know of no theory upon which any depreciation allowance could be made to cover it. If it ever does occur, it can be considered by the Commission in the light of actual facts, and such allowance and adjustments made as may be proper under the circumstances, but until it does* occur it is entirely irrelevant to any consideration of the proper allowance to be made to cover the anticipated annual depreciation in the Company's property. [*R. 1652]

The last question raised by the appeal is whether the action of the Commission in abolishing the second fare zone on the Halethorpe line was unlawful, or unreasonable. In objecting to that action the Company has used the term "confiscation" with considerable freedom and some looseness. If, as we have held, rates yielding a return of 6.26 are not confiscatory in law, then it is difficult to see how extending the city fare zone to include Halethorpe is confiscatory, for** any loss occasioned by the extension is absorbed by the increased fares and does not in theory affect the rate of return, and if in fact it does affect that rate, such adjustment may be made by the Commission as actual experience shows to be necessary to enable the Company to earn a fair return on its whole property. Naturally some parts of the Company's system are more profitable than others, but that does not make it necessary to establish different fares for the different lines, varying in amount with the prosperity of the several lines. Some reliance was placed upon a supposed "city line standard," but the city line is a mere arbitrary invisible line of separation between political units, and the "standard" was established apparently with the consent of the Company that there might be a single fare within the city limits, and has certainly been disregarded in at least several instances. The extension to Halethorpe is not profitable, was built at a loss at the request of [**155 Md. 606]

the inhabitants of the territory served by it, and it is intimated, upon their assurance that they would not ask that it be included in the city fare zone. [R. 628.] It is nevertheless a part of the entire system, and the rates charged on it should be measured to some extent at least by the standards applied to other parts of the system.

The Commission found as a matter of fact that "the total distance from the center of the City that may be traveled on the Halethorpe line is a fraction more than five miles, while the single fare zones on nine other lines extending into the suburbs are longer than the two zones to Halethorpe. As pointed out by counsel, the first fare zones of six of these nine lines extend a substantial distance beyond
R. 1653] the Baltimore City limits. Five of them have no second fare zones whatever." That finding was based upon undisputed evidence, and in our judgment afforded a substantial basis for the action of the Commission in including the entire Halethorpe line within a single fare zone, and we cannot say that it was either unlawful or unreasonable, and we will not therefore disturb that part of its order which deals with that question. *North. Cent. Rwy. Co. vs. Pub. Serv. Commn.*, 122 Md. 255.

"155 "For reasons already stated it follows that so much of the
Md. 607] decree from which this appeal was taken as vacates that part of the order of the Commission which fixes the schedule of fares to be charged by the Company, and so much of said decree as enjoins the enforcement of that part of said order was erroneous, but because that schedule was in part based upon an allowance for annual depreciation arrived at by unlawful and unreasonable methods and by the use of an unlawful and unreasonable basis, that part of the decree will neither be affirmed nor reversed, but the case will be remanded in order that the Commission may further consider the question of depreciation and make any changes in the rate schedule which may be necessary and requisite to yield to the Company a fair and reasonable return upon the

fair value of its property. And so much of the decree as affirms that part of the order which extends the first fare zone of the Halethorpe line to the terminus thereof, will be affirmed.

Decree affirmed in part and reversed in part and case remanded for further proceedings in accordance with the views expressed in this opinion, each party to pay one-half the costs.

IN COURT OF APPEALS OF MARYLAND.

[Title omitted.]

CONCURRING OPINION—Filed July 23, 1928.

ADKINS, J., filed a concurring opinion as follows:

It will probably be thought a work of supererogation for one who agrees with the conclusions reached in the able *opinion written by JUDGE OFFUTT for the Court to file a concurring opinion. When the opinion is read as a whole there should be no misconception as to its meaning so far as any expressions therein are necessary to the conclusions. But it is always possible in reading detached expressions and considering them out of their setting to attribute to them a bearing not intended by the writer or by the Court. For that reason, and to make my own position clear, I file this memorandum, in which I desire to state what I understand** to be the meaning of JUDGE OFFUTT and of the Court as to the matters herein referred to.

[*R. 1654]

[**155 Md. 608]

It was not intended, as I understand, to suggest that there is anything in the record to indicate that a ten cent fare would be more than the service is worth if such a fare should be found necessary to pay for the cost of the service and to give the company a fair return on the value of its property. Nor, as I understand, was it intended to indicate that a finding of the commission as to the proper amount to be

allowed annually for accruing depreciation would be conclusive and unreviewable, even though the commission should base that finding on present value rather than the original cost, if the amount so found should be manifestly unreasonable on the whole evidence. Here, the question of confiscation is involved; and in any hearing by a Court on such a question it must be satisfied, not necessarily that it would have reached the same conclusion on the evidence, but, at least, that the conclusion reached by the commission was fairly deducible from the evidence. The opinion clearly indicates the kind of evidence on which a finding as to depreciation should be based.

There are some expressions in the opinion with which I am not in full accord, but they are not necessary to the conclusions reached. For instance, I do not agree with all that is said in what is designated in the opinion as the third method of approach to the question whether the schedule of fares authorized by the Commission is confiscatory within the meaning of the State and Federal Constitutions, or unlawful and unreasonable within the meaning of the statute creating the commission.

[*R. 1655]
[155 Md. 612]

IN COURT OF APPEALS OF MARYLAND.

[Title omitted.]

DISSENTING OPINION BY CHIEF JUDGE BOND—Filed Aug. 2, 1928.

I concur in what JUDGE PARKE has written, but would add these remarks in elaboration of some portions of it. It seems to me that so long as the present equipment and service of the utility are necessary to the public, it is a mistake to say that the ordinarily fair return on that property may
[**155 Md. 613]
be pared** down at all merely because there were formerly more riders for it, more profitably distributed. The fair

return on a utility property, for the service rendered with it, is to be calculated on present conditions only. The Supreme Court of the United States has said that the problem of a fair return is a problem of day by day, month by month, and year by year, as service continues. *Denver vs. Denver Water Co.*, 246 U. S. 178; *Detroit United Ry. vs. Detroit*, 248 U. S. 429. I take it that if a new owner—a purchaser at a sale, for instance—should offer to meet the existing need with the same or similar equipment, he could not be denied the ordinary fair return on property of such value merely because conditions were better at some previous time. Another and different situation would be presented if it could be found as a fact that this sort of service cannot get the fair return because the service would not be worth so much to users; but I do not see the foundation for that finding in this case. The evidence given on the point goes only so far as to predict that a fare of ten cents would keep away two per cent. of the present users [R. 694]. And, beyond that testimony, if the full fair return requires a fare of so much, ten cents, comparison of that amount with prices generally paid for other services, bus fares, for instance, or fares of steam or interurban electric railways for similar mileage, or prices paid for cheap commodities and entertainments, seems to me to render it impossible to say that it is more than street railway transportation for an average of some miles is worth to riders.

JUDGE PARKE authorizes me to add that these views are in accordance with his own.

IN COURT OF APPEALS OF MARYLAND. [*R. 1656]

[Title omitted.] [155 Md. 608]

DISSENTING OPINION OF JUDGE PARKE—Filed Aug. 2, 1928.

While agreeing with the conclusions of the Court that

the commission's method of determining the depreciation reserve was improper and that its order abolishing the second fare to Halethorpe was not unlawful, the writer believes the limita"tion of the rate of return to 6.26 per centum was unlawful and that the conclusions reached by the trial Judge were substantially correct.

["155 Md. 609]

As was declared in the *Railroad Commission Cases,* 116 U. S. 307, at p. 331, "This power to regulate is not a power to destroy, and limitation is not the equivalent of confiscation. Under pretense of regulating fares and freights, the State cannot require a railroad corporation to carry persons or property without reward; neither can it do that which in law amounts to a taking of private property for public use without just compensation, or without due process of law." If a public utility is deprived by a rate regulation of the right to receive a fair return upon the fair value of its property used in the public service, its property is confiscated, and the regulation is void, whether enacted by a legislative assembly or imposed by a commission pursuant to delegated authority. The determination of the constitutionality of a rate "depends upon the valuation of the property, the income to be derived from the proposed rate, and the proportion between the two—pure matters of fact," as was said by Mr. Justice Holmes in *Prentis vs. Atlantic Coast Line,* 211 U. S. 210, 228. To adjudicate the value of the property of a public utility or to determine its earning capacity, or the resultant return upon this value of a proposed rate is essentially the exercise of a judicial function; and, for that reason, the statute provides for a review by the court in order that the owners of a utility be not deprived of their property without due process of law. *Chicago, Mil. & St. P. Rwy. Co. vs. Minnesota,* 134 U. S. 418, 457; *Reagan vs. Farmers Loan & Trust Co.,* 154 U. S. 362; *Ohio Valley Co. vs. Ben Avon Borough,* 253 U. S. 287. And this constitutional right to a judicial hearing in rate-making

*cases embraces not merely questions of law but also questions of fact, which are generally controlling. Supra. [*R. 1657]

So, the statute provides for a judicial inquiry by an action at law "to vacate and set aside any such order on the ground "that the rate or rates, tolls, charges, schedules, joint rate or rates, fixed in such order is unlawful, or that any such regulation, practice, act or service fixed in such order is unreasoanble." Code, art. 23, sec. 404. The mere provision for judicial review is sufficient to demonstrate that the findings of fact by the Commission are not made conclusive; and the statute deals with the point and makes the "determination, requirement, direction or order of the commission complained of" only *prima facie* correct by providing that "the burden of proof shall be upon the party adverse to such commission or seeking to set aside any determination, requirement, direction or order of said commission, to show by clear and satisfactory evidence that the determination, requirement, direction or order of the commission complained of is unreasonable or unlawful, as the case may be." Code, art. 23, sec. 408; *Pub. Serv. Commn. vs. Byron,* 153 Md. 464, 470, 471, 479, et seq. [*155 Md. 610]

These provisions of the statute impose upon the court the duty of weighing and adjudging the facts upon which the unlawfulness or unreasonableness of the Commission's findings in the instant case depends, and, therefore, the Court cannot accept as final any determination of fact involved in the present controversy but only give it the *prima facie* presumption of correctness, so where the court thus finds from the facts that the action of the commission was either unlawful or unreasonable, it is not only the province but the plain and imperative duty of the court so to decide.

It is held by the commission that the subsisting street railway service is a method of transportation whose maintenance is necessary in the public interest, carrying more passengers during the hours of peak load than ever before

in its long history. The present system is, therefore, far from being moribund. So, whatever the risks of its urban business, none is greater than its operation under less than a fair rate of return and the uncertainty that this ruinous situation will be surely, timely and adequately relieved. A failure to grant such relief invites disaster; and stinted
[*R. 1658] *re**lief often simply delays a crisis which when it arrives
[**155 will prove immediately disastrous to the owners of the
Md. 611] utility and, in the end, to the interests of the public. The position of the utility is made graver, and the public will not ultimately be benefited by the ruling in the pending case since, in the opinion of the writer of this dissent, the weight of the evidence clearly and satisfactorily establishes that the Commission's limitation of the fair rate of return to 6.26 per centum of the value of its property is confiscatory and so unlawful. *Bluefield Company vs. Pub. Serv. Commn.*, 262 U. S. 679, 694-695.

Where the service rendered by the public utility is necessary, the owners of the utility are entitled to a return which will cover the expenses of operation and a fair return upon the property used. The right to compensation is fundamental since the property used represents capital invested, and since the continued existence of the utility depends upon the ability both to sustain its credit and to procure its capital requirements from time to time, a fair return on the property used means such a return as will induce capital to supply these financial demands. Capital is the most fluid and independent of commodities and none is more subject to the law of competition; and the rate at which money is borrowed is the best index of the financial position and condition of the borrower. Under existing circumstances, the utility can not find a market for preferred or common stock in order to obtain money for capital expenditures, and it has been compelled to procure funds through the issue of

bonds and short term notes. In the opinion of the Court is found a table showing the cost to the utility of slightly over $18,000,000 of money borrowed from July 1st, 1920, to March 1st, 1927, on bonds and securities. The average cost was 7.23 per centum. The lowest cost was 6.6 per centum for money borrowed in 1922 on bonds. The last loan was on March 1st, 1927, when $2,000,000.00 of three years 6 per centum gold notes were issued at a cost to the utility of 7.32 per centum. Without a sufficient supply of capital there can be no efficient nor economical administration of a municipal street railway system; and the onerous cost of these borrowings reflects the extent to which "the credit of the utility has been impaired by insufficiency of the revenues of *the Company and the uncertainty of its being allowed an increased rate of return on the value of the property which it employs for the public convenience. It would seem inevitable that a fair return on the property should be more than the cost of money obtained through the sale of bonds and other securities. *McCardle vs. Indianapolis Water Co.*, 272 U. S. 400, 419, 420. The clear and convincing testimony in this case is that a basic rate of 6.26 per centum is not a fair return upon the property used, nor sufficient to enable the utility to maintain its credit or to secure its necessary capital at a reasonable cost. [R. 535, 543, 1143, 1255, 1274, 1275, 1312-1313, 1336-1337.] This evidence cannot be denied its legal effect by comparing the fares and rates of return allowed to street railway utilities of other municipalities of similar size, where the local conditions and hazards are different and a park tax equivalent to one-half a cent for every fare is not added. Such evidence is entitled to some weight in considering the lawfulness of the rate of return in question, but it is obvious that its value is slight when so much depends upon the circumstances of every case and the nature and method of determining the rate base upon which the return is allowed.

[**155 Md. 612]
[*R. 1659]

It follows that this testimony cannot prevail over the clear and satisfactory evidence on the part of the utility that a rate of return of 6.26 per centum is not compensatory and that the case should have been remanded to the Commission to ascertain a rate which would not be confiscatory. *Public Serv. Commn. vs. North. Cent. Rwy. Co.*, 122 Md. 355, 389, 390.

FILE COPY

OCT 16 1929
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 55.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE,
Appellant,
v.
HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND,
Appellees.

No. 64.

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER, AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND,
Appellants,
v.
THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE,
Appellee.

Appeal From, and Cross-Appeal From and Petition For Certiorari To, The Court of Appeals of the State of Maryland.

SPECIAL BRIEF FOR THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, APPELLANT IN NO. 55 AND CROSS-APPELLEE AND RESPONDENT IN NO. 64.

W. W. WILLOUGHBY,
Of Counsel for the United Railways and Electric Company of Baltimore.

King Bros., Inc., Printers, 208 N. Calvert St., Baltimore, Md.

SUBJECT INDEX.

	Page
The Issue Discussed in this Brief	2
The Street Railway Problem	2
The Essential Facts in this Case	2
The Fair Value of the Company's Property is not in Dispute	4
Argument	5
The Element of Risk in its Relation to Reasonableness of Return	6
Misinterpretation by the Commission and Appellate Court of the Relief Asked for by the Company	7
Conditions Peculiar to Baltimore	10
Conclusion	12

TABLE OF CASES.

Bluefield Water Works and Improvement Co. v. Public Service Commission, 262 U. S. 679	5
City of Fort Smith v. Southwestern Bell Tel. Co., 270 U. S. 627	5
Covington & L. Turnpike Road Co. v. Sanford, 164 U. S. 578	8, 9
Galveston Electric Co. v. Galveston, 258 U. S. 388	5
Knoxville v. Knoxville Water Company, 212 U. S. 1	15
Lincoln Gas & Elec. Co. v. Lincoln, 250 U. S. 256	5
McCardle v. Indianapolis Water Co., 272 U. S. 400	5, 6
Ohio Valley Water Co. v. Ben Avon Borough, 253 U. S. 287	4
Ottinger v. Brooklyn Union Gas Co., 272 U. S. 579	5
Pacific Gas & Elec. Co. v. San Francisco, 265 U. S. 403.	5
Willcox v. Consolidated Gas Co., 212 U. S. 19	5

In The

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 55.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE,
Appellant,

v.

HAROLD E. WEST, Chairman, and J. FRANK HARPER and STEUART PURCELL, Members, Constituting the Public Service Commission of Maryland,
Appellees.

No. 64.

HAROLD E. WEST, Chairman, and J. FRANK HARPER, and STEUART PURCELL, Members, Constituting the Public Service Commission of Maryland,
Appellants,

v.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE,
Appellee.

Appeal From, and Cross-Appeal From and Petition For Certiorari To, The Court of Appeals of the State of Maryland.

SPECIAL BRIEF FOR THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, APPELLANT IN NO. 55 AND CROSS-APPELLEE AND RESPONDENT IN NO. 64.

The Issue Discussed in This Brief.

The purpose of this brief is to focus and summarize the constitutional principles which seem to the writer decisive of the case.

Although there is a voluminous record, the issues involved are comparatively simple. The chief of them, and the only one which will be discussed in this brief, is whether a net return of 6.26 per cent. upon the fair value of the property of The United Railways and Electric Company of Baltimore is, or is not, so unreasonably low as to deprive the Company of its property without due process of law.

The Street Railway Problem.

Apart from post-war costs (practically doubled) this particular type of public utility finds its business affected by the increased use of the private automobile. But, notwithstanding the traffic thus lost, the utility, under Commission regulation, must continue to render its service. Even the habitual automobile user insists on the street car as a standby. This combination of post-war costs and changed use of service has produced, the country over, successive increases in street car fares,—the amounts necessarily depending on local conditions. Variations may exist in the frequency of the service required; in the average length of the single fare ride; in the extent of free transfers; in taxes and public charges. Such and similar variations may make necessary in one locality a fare which will be greater or less than is required in another locality. In the instant case it will appear that there are special and peculiar reasons why there is required in Baltimore a higher fare than is needed in many other cities.

The Essential Facts in This Case.

The essential facts are fully set forth in appellant's main brief. However, for the sake of simplicity and clarity, a chronological abstract of them will be given.

Founded in 1899 by consolidation of various railways, the Company operates all the street railways in Baltimore and vicinity, and thus serves a population of 800,000.

As the result of the World War, operating costs of the Company were practically doubled. The use of private automobiles increased and continued to increase. While the Company continued to carry, through the rush hours, more passengers than before, its profitable off-peak and night traffic fell off. The Company, however, is compelled to keep ready for service substantially the same number of men and the same amount of equipment as in former years in order to meet the high demand of the rush hours.

Permission to put into effect fares that would give relief was asked from time to time of the Public Service Commission of Maryland. While increases were allowed, they were relatively small in comparison with increased wages and costs, and, where the Commission purported to grant relief, its orders at times were so hedged about with concessions to the public that the Company obtained little net relief. Although the Company was not earning a fair return, it did not ask further relief until, after many years of preparatory investigation, followed by prolonged hearings, the Commission, by unanimous vote, had valued the property, on which it was entitled to a return, at $75,000,000.

The Commission refused an application for emergency relief, and later, after a hearing, by Order of February 10, 1928, denied the increase to 10 cents asked for, but authorized the Company to put into effect a fare of three tickets for 25 cents for adults, or 9 cents to the passenger not buying tickets, while maintaining reduced fares for children under 12 years, for school children, and for commuters. This, in substance, was an increase of 5/6 of a cent in the base fare.

A fair reading of the Commission's opinion will show that, instead of determining what fares would produce a proper return, the Commission first determined what fare it would allow and then proceeded to find out what rate of return such a fare would produce; and, having estimated

that to be 6.26 per cent., declared that to be a reasonable return.

The Company appealed to the Maryland Courts. Judge Ulman, in the lower court, in a very able opinion, sustained the Company's contentions. The Commission then appealed to the Court of Appeals of Maryland, which Court, by a divided bench, upheld the finding of the Commission that a return of 6.26 per cent. would not be confiscatory; and, by a unanimous bench, held illegal the Commission's basis of computing allowance for depreciation.

In conformity with this decree, the Commission increased the depreciation allowance and also increased fares by an amount calculated to produce no more than the increase in depreciation allowance. This still left the estimated rate of return on valuation 6.26 per cent. Hence this appeal.

The Fair Value of the Company's Property is Not in Dispute.

The central issue in this case, as above stated, is simplified by reason of the fact that the fair value of the property of the Company is not here in dispute. Nor is there any question as to the fact that the Company is efficiently organized and administered, and its operations efficiently and economically conducted. This is expressly stated and conceded by both the Public Service Commission and the Courts of Maryland. (R. 1631, 155 Md. 584; R. 48, 1641, 155 Md. 594.)

There is not involved in this case, as the Maryland Court of Appeals seemed to think, any question as to the presumptive value to be ascribed by the courts to the findings of fact by the Public Service Commission. The true issue is the legal conclusion to be drawn from the undisputed facts as to what is, constitutionally speaking, the reasonable net return upon the value of its properties which the Company is to be permitted to obtain, if it can. As to this, this Court will exercise its own independent judgment.

Ohio Valley Water Co. v. Ben Avon Borough, 253 U. S. 287.

ARGUMENT.

In popular thought, a Public Service Commission exists to prevent rate increases; and it is almost inevitable that, when given, they will be compromises. It is obvious that, in the instant case, the fare was fixed, not in view, but in disregard, of a normal rate of return. And it is submitted that the Commission in so doing, and the Court below in sustaining the Commission, have misconceived the principles settled by the decisions of this Court. It is proposed briefly to summarize these principles; and to contrast with them the rulings below.

An examination of the cases seems, to the writer, to establish the following propositions:

The Company is constitutionally entitled to the right, that is, to the liberty, to earn, if it can, a reasonable net return on the rate base,—that is, the agreed valuation of its property devoted to and required for the public demand,—so long as it is efficiently and economically managed. What is a reasonable return, is a question in each case to be determined in the light of its special facts. At the time and under the conditions presented in *Willcox v. Consolidated Gas Co.* (212 U. S. 19) a net return of 6% was deemed sufficient to satisfy the minimum constitutional requirement; but such a rate cannot now be considered adequate in cases presenting different and more exacting features. A permissible rate of return must be sufficient to attract new capital to provide the required service: *Lincoln Gas & Elec. Co. v. Lincoln,* 250 U. S. 256; *Galveston Electric Co. v. Galveston,* 258 U. S. 388; *Bluefield Water Works and Improvement Co. v. Public Service Commission,* 262 U. S. 679; *Pacific Gas & Elec. Co. v. San Francisco,* 265 U. S. 403; *City of Fort Smith v. Southwestern Bell Tel. Co.,* 270 U. S. 627; *Ottinger v. Brooklyn Union Gas Co.,* 272 U. S. 579; *McCardle v. Indianapolis Water Co.,* 272 U. S. 400.

Confiscation is in the present tense; and it would be elaborating the obvious, to argue that new money can not be attracted to a street railway (no matter how sound its financial structure) if the investor's *permissible* return is limited to 6.26%. It is the stock, as well as the bond, investor whose viewpoint governs; *McCardle v. Indianapolis Water Co.*, 272 U. S. 400.

The Element of Risk in Its Relation to Reasonableness of Return.

There is a fairly well-formed present judgment upon the part of the federal courts that, where there is the ordinary element of risk involved in the financing and operating of a public utility, the public utility should be permitted to earn annually, if it can, at least 8 per cent. upon the fair present value of the properties employed by it in the service of the public. However, it is not contended by the Company in the case now at bar that this rate of return has hardened into a fixed figure.

There can be no denial of the fact that the street railway business is one that is attended by considerable financial risk to the investor.

The Maryland Public Service Commission has itself recognized this, for, in its opinion in this case, it says:

> "It is true, as counsel states, that in not one of those cases in which a utility was held entitled to earn a return of eight per cent., were the risks of the utility business as great as they now are in the street railway business. And it is, we believe, because of those very risks that capital is reluctant to invest in street railways, and that no new street railways are being built in the United States today." (R., 37.)

However, by a mode of reasoning which almost defies explanation (so totally lacking in logic is it) the Commission has held that this very risk which now inheres in the business of furnishing street railway transportation, is a ground for denying to the Company the right even to try out fares

estimated to produce more than 6.26 per cent. return upon the fair value of its properties.

Misinterpretation by the Commission and Appellate Court of the Relief Asked for by the Company.

It would appear that the Commission and the Appellate Court were, at this point of their argument, controlled by the impression that the Company was asking the Commission to give to it some affirmative aid, at the expense of the public, in order that the Company might overcome the adverse conditions which confronted it. Of course, this is not what the Company had asked for. All that it sought was that it should not be restrained from taking a step which was required in order that those conditions might be successfully met,—namely, raising its fares to a point that would yield to it a reasonable return upon its property.

The learned Judge who delivered the Opinion of the Appellate Court supposed the case of a corporation engaged in the manufacture of ice; and supposed (for the argument's sake) that such business was under Commission control. He then asked whether, facing the loss of custom due to modern methods of domestic refrigeration, such company could look to the Commission for salvation. There was here a double confusion,—which the Commission also shared. In the first place, the appellant was merely asking the Commission for the *opportunity* to exercise its constitutional right; and not for any guaranty that such exercise would "earn a sufficient return"; or for "protection". And, in the second place, if the supposed ice company were required by the Commission to manufacture a given quantity daily (to melt if not bought) then the supposed case would have an element of appositeness.

The Commission suggests (as a possibility rather than as a fact) that a car-fare, based on a reasonable rate of return, may exceed the "value of the service" to the user. The majority Opinion of the Appellate Court below noticed the possibility; but, strangely enough, after intimating that the fact is so incapable of proof as to be "*in nubibus*",—in-

timated that, on such a point, the views of the Commission should be controlling. Judge Adkins, concurring, was careful to say that, as he understood the Opinion, "It was not intended * * * to suggest that there is anything in the record to indicate that a ten cent fare would be more than the service is worth, if such a fare should be found necessary to pay for the cost of the service and give to the company a fair return on the value of its property." (R., 1654, 155 Md. 608.)

Both the Commission and the Appellate Court cite *Covington & L. Turnpike Road Co. v. Sandford* (164 U. S. 578) decided in 1896. This case arose before the era of valuations; the Turnpike Company was insisting on rates sufficient to pay dividends; and this Court aptly cited the common-law principle that public servants must give reasonable service at reasonable rates. The case is, then, authority for the proposition that a public utility has not a constitutionally guaranteed right to levy charges that will enable it to pay dividends upon its stock irrespective of whether or not its capitalization has a due relation to the fair value of its properties, or whether the Company is efficiently organized and efficiently and economically operated. As to this, this Court rightly said:

> "The public cannot properly be subjected to unreasonable rates in order simply that stockholders may earn dividends." *Covington & L. Turnpike Road Co. v. Sanford, supra,* at 597.

The case is also authority for the doctrine, so obvious as scarcely to need declaration, that, though a public utility is constitutionally entitled to earn, if it can, a reasonable return upon the fair value of its properties devoted to the public use, there exists no guarantee of any sort, legal or otherwise, that a given public utility will, in fact, be a profitable one to its owners. As this Court said:

> "If a corporation cannot maintain such a highway and earn dividends for stockholders, it is a misfortune for it and them which the Constitution does not require to be remedied by imposing unjust burdens upon the

public." *Covington & L. Turnpike Road Co. v. Sandford, supra,* at 597.

If a case is conceivable where a non-confiscatory charge for a necessary service would exceed its value, then the public's constitutional remedy is condemnation. The question is, however, academic, for neither Court nor Commission in the instant case held (or could hold) that a base fare of 10 cents would exceed the value of the permissible rides (city plus suburban) furnished by the appellant. Nor, so far as the writer has been able to discover, has a rate, confiscatory as regards the utility, ever been judicially upheld on the ground that a higher rate would be too burdensome to the public using, and demanding the use of, the utility's property.

The assertion that a charge of ten cents for a ride, which the Company had asked permission to make, would be more than the transportation would be worth, the Company has also met by showing that the service now supplied to the people of Baltimore is as well worth ten cents as was the street car service worth five cents a generation ago when that fare was universally deemed to be a reasonable one to the public. The Company has shown that, in the labor and materials that produce a ride, the intrinsic purchasing value of a ten cent piece is no greater than was a five cent piece twenty years ago.

And, still further, the Company can point to the fact that in quantity and quality the rider gets more for the fare than he did before. Evidence in support of such statements of the Company appears in the Record in this case. Indeed, we find the Public Service Commission of Maryland, in its opinion of February 10, 1928, itself saying:

> "In fact, taking all things into consideration, including the cost of giving the service, the extension of lines and fare zones, the greater transfer privileges, the auxiliary bus lines and the like, the Commission believes that street car riders as a whole today receive relatively much more for the fare they pay than they ever received for a five cent fare." (R. 23.)

If then we combine the concededly greater service which is today suplied by the Company with the decreased value of money, it is clear that a present ten cent fare is a reasonable one to the public.

Conditions Peculiar to Baltimore.

It needs to be stated that there are reasons, peculiar to the City of Baltimore, why fares in that city might well be expected to be higher than in other cities of the United States.

The United Railways & Electric Company of Baltimore is one of the most heavily taxed street railways in the United States. In addition to all of the common varieties of public charges (*e. g.*, real and personal taxes, licenses, paving, repairing, snow-removing and street sprinkling) there is an unique "Park Tax" of 9% on *gross* receipts within the City limits,—now greatly expanded by annexation since Commission control.

As regards the Park Tax of 9% of gross, the Public Service Commission of Maryland in its opinion of February, 1928, said:

> "An element in the street railway situation in Baltimore which results in higher rates of fare, and which does not obtain, so far as this Commission is aware, in other cities, is the Park Tax. This matter is better understood now by the car riding public than it was some years ago. It is purely and simply a tax on the street car riders for the support of the city parks. The Company does not pay it. It is paid by the riders and the Company simply acts as collector, receiving approximately one-half cent on each fare the rider pays and turning the money over to the City quarterly. It was, perhaps a tax on the Company in former years, but now it is an expense which must be deducted before any rate of return is calculated. The result is that the parks are maintained, stadium and swimming pools built, tennis courts, golf courses, baseball fields and the like established, and park roads maintained for automobilists, at the expense of the street car rider in-

stead of the general public. The street car riders have contributed for these purposes, since 1910, when the Company was put under Public Service Commission regulation, the sum of $15,406,794.00. This, of course, in addition to the general taxes and such special charges as those made for street paving and for maintaining the paving between the tracks and for two feet on each side, which are also paid by the street car riders." (R,. 28-29.)

But this is not all. The City, in 1918, tripled its area by annexation of surrounding territory. Single fare zones were extended, and finally, following an order of the Commission, all second fare zones within this greatly enlarged area were abolished. The evidence shows that the lengthened rides and the abolished second fares have reduced the Company's former receipts by more than $500,000 annually. To which extent also the fare increases have been illusory. (R. 21; Company's Exhibit No. 13; R. 1409-1411).

Other misconceptions of the Commission, incorporated (but not made factors) in the majority opinion of the Appellate Court below,—represent two aspects of the same thing. Lists were given of numerous localities where the street railway company was receiving less than the normal rate of return; and less than a base fare of 10 cents. For this, there are doubtless local explanations; the fact is that many street railway companies also operate prosperous electric light and power plants. Certain it is that base fares are increasing all over the country; and, beyond any doubt, no unbiased mind can see anything unnatural in a base fare of 10 cents in Baltimore today. Certain it is that neither Court nor Commission has found that it would exceed the worth of the ride. The 9% park tax at once reduces any increase that may be given and the reduced purchasing power of the nickel in combination with the extension of lines and fare zones easily shows that the Appellant stands on fair ground. But, apart from all this, it seems strange to argue that because street railway companies in other

localities *may* be submitting to confiscation, therefore, the Appellant should not complain.

Equally irrelevant is the suggestion that the Appellant's troubles are due to its capital structure.

It is said by the Commission and noticed by the Appellate Court below that the Appellant's bonded debt is heavy in comparison with its capital stock. The Court of Appeals fell into error in determining the Company's ratio of bonded debt to capitalization on the basis of customary comparison,—for it included in the bonded debt $14,000,000 of Income bonds which, for purposes of comparison, are substantially preferred stock (for which indeed they were exchanged). While a lien, these bonds have no fixed due date; they are callable at the Company's option in and after 1949, and the interest (though cumulative) is payable only if and when earned. The great bulk of the Company's bonded debt bears interest at the rate of 4% per annum. Surely it is a confusion of causes to suggest that this not abnormal financial structure is responsible for a credit situation which is quite in line with the experience of street railways generally. Furthermore, whether a Company buys its property through the use of stock or bonds, or both, has no bearing on the fairness of the return for the public's use of that property.

CONCLUSION.

It will have sufficiently appeared from what has been said that the present case is one of importance, because the interest of the community is, in every real sense, identical with that of the Company. Already the streets of down-town Baltimore are congested to such an extent that an attempt to transfer to private automobiles or even to busses the passengers now carried on the street cars would render the traffic situation an impossible one. In the Opinion of the Maryland Public Service Commission we find it declared:

"That the service rendered by the Company is a necessary and vital service to the people of Baltimore, is indicated by the fact that the demand upon the system during morning and evening rush hours is almost greater than the Company can meet. * * * The motor car has largely taken the place of the street car for pleasure riding. The street cars are used only by those who find them necessary or convenient to get to and from places of employment, or for other trips about the city. The service to the people for such trips is almost indispensable. It would be practically impossible for all the people who use the street cars to reach their places of business or employment and return to their homes, by any other means of transportation now available." (R. 22.)

In the able Opinion of Judge Ulman, rendered in the Court of first instance, it is said:

"This evidence, which is not disputed, shows that at the hours of peak load, the Company carries more passengers now than it ever did. Hence it is obvious that the competition of the private automobile, of which so much has been said in the briefs and in argument, has *modified* the need for public transportation in Baltimore, but has not shown a tendency to supplant it. This modification results in an increased cost of service. Necessity of service is as great as it ever was." (R. 74-75.)

In order that this indispensable public service may be rendered in the form and to the extent to which it should be rendered, it is necessary, as has been earlier said, not only that the private capital already invested should be permitted by law to earn, or at least to endeavor to earn, a fair net return thereupon, but that the street car companies should be enabled to show earnings which will make it possible for them to attract, at reasonable rates, addi-

tional capital in order that necessary additions to service may be provided.

It is to be regretted, although it is not perhaps a matter for surprise, that the public, or even public service commissions, have not always recognized that where, by drastic regulations, the public utility is hampered in getting new money, the interests of the public will suffer. As Judge Parke, of the Maryland Court of Appeals said, when passing upon the attitude of the Commission in this case:

> "A failure to grant such relief invites disaster; and stinted relief often simply delays a crisis which, when it arrives, will prove immediately disastrous to the owners of the utility and, in the end, to the interests of the public." (R. 1657-1658; 155 Md. 610-611.)

In an address before the American Economic Association last year, the eminent authority, Dr. Arthur T. Hadley, President Emeritus of Yale University, gave as his opinion that public service companies need to be permitted to earn at least ten per cent. upon the fair value of the properties, if they are to be enabled to give satisfactory service to the public—that a denial to them of the possibility of earning such a return is, apart from any question of constitutionality, inexpedient as regards the public. He said:

> "Unless the return allowed by the public service commission to successful companies is so high as to compensate for the risks of industrial progress—say 10 per cent. at least—it discourages the investment of new capital. * * * Every first rate authority from Farrer down, I believe, agrees that limiting profits, as a means for lowering rates, defeats its own ends." (American Economic Review, March, 1928.)

As to the broader interest of the American public, that the legitimate rights of property shall not be invaded, there may be quoted the words of Mr. Justice Moody, who, speak-

ing for a unanimous Court in *Knoxville v. Knoxville Water Company*, 212 U. S. 1, said:

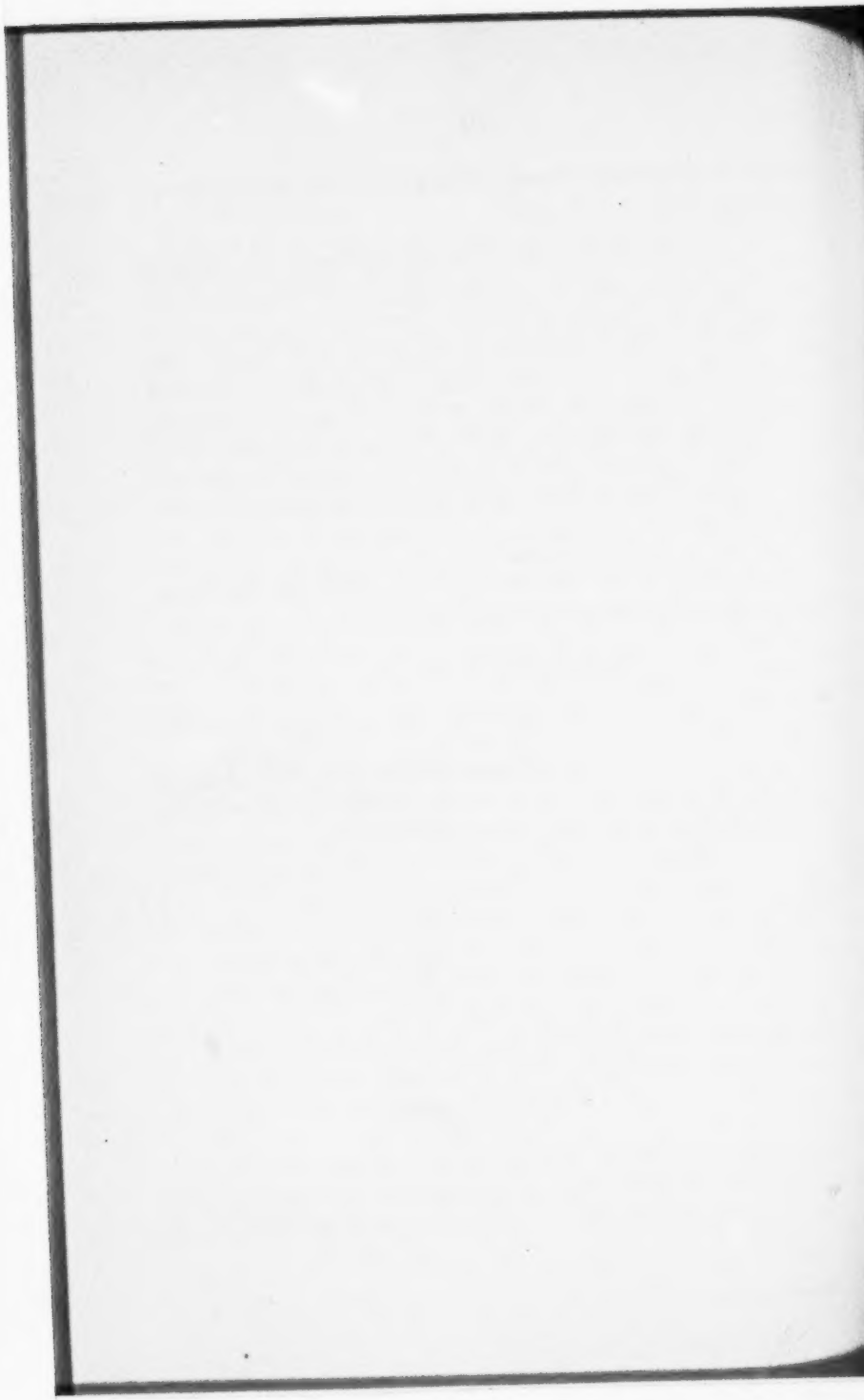
> "Our social system rests largely upon the sanctity of private property; and that state or community which seeks to invade it will soon discover the error in the disaster which follows. The slight gain to the consumer, which he would obtain from a reduction in the rates charged by public service corporations, is as nothing compared with his share in the ruin which would be brought about by denying to private property its just reward, unsettling values and destroying confidence."

The decree of the Appellate Court below on the Company's appeal in No. 55 should be reversed.

Respectfully submitted,

W. W. WILLOUGHBY,

Of Counsel for the United Railways and Electric Company of Baltimore.



FILE COPY

FILED
OCT 16
CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 55.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, *Appellant,*

versus

HAROLD E. WEST, CHAIRMAN, J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND, *Appellees.*

No. 64.

HAROLD E. WEST, CHAIRMAN, J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND, *Cross-Appellants and Petitioners,*

versus

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE,

Cross-Appellee and Respondent.

CROSS-APPEAL FROM AND WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

BRIEF FOR THE PUBLIC SERVICE COMMISSION OF MARYLAND, APPELLEES AND CROSS-APPELLANTS AND PETITIONERS.

RAYMOND S. WILLIAMS,
THOMAS J. TINGLEY,
JOHN H. LEWIN,
Counsel for Public Service Commission of Maryland.

The Daily Record Co. Print, Baltimore.

SUBJECT INDEX TO BRIEF.

	Pages
STATEMENT OF THE CASE	2
Opinions of the Court of Appeals	2
The Company's Claims	3
Decision of the Court of Appeals	3
Special problem presented to the Commission, i. e. what was a just and reasonable fare to the Company when loss of revenue was due to increasing loss of patronage?	5
HISTORY OF THE CASE	5
Present proceedings begun August 1, 1927	5
Opinion and Order of the Commission	6
Bill of Complaint filed by Company against Commission	6
Decision of Circuit Court No. 2 of Baltimore City	7
Appeal by Commission and Cross-Appeal by Company to Court of Appeals of Maryland	7, 8
Decision of Court of Appeals	8
Appeal by Company and Cross-Appeal by Commission to Supreme Court of United States, both dismissed November 19, 1928	9
Depreciation allowance increased by Commission in pursuance of mandate of Court of Appeals	9
Supplemental Bill filed by Company against Commission in Circuit Court No. 2 of Baltimore City	10
Supplemental Bill dismissed by Circuit Court No. 2 of Baltimore City	10
Court of Appeals affirms Circuit Court No. 2	10
APPEAL BY COMPANY TO SUPREME COURT AND CROSS-APPEAL AND PETITION FOR CERTIORARI BY COMMISSION	11
Assignments of Error on Commission's Cross-Appeal	11
OUTLINE OF FACTS IN EVIDENCE BEFORE THE COMMISSION	12
Organization of Company by consolidation in 1899	13
Capitalization of Company	14
The Valuation Case before the Commission	15
Operations of the Company and rate of return earned for the years 1920-1926	16
Successive fare increases	17
Allowances by Commission as contrasted with claims of Company	17, 18
SUMMARY OF ARGUMENT	18
Propositions I, II, III, IV, V and VI	18-20
ARGUMENT	20
I. Burden on Company to show that action of the Commission in its final result is necessarily confiscatory	20
(1) Property of Company valued as if no competition existed	21
This course compelled by Maryland decisions	26
(2) The Supreme Court will consider for itself whether there is confiscation in fact	30

Pages

II. Commission compelled by Court of Appeals to fix depreciation allowance on value instead of on cost, thus inflating that allowance 40

(1) Original claims as to depreciation allowance as contrasted with first allowance by Commission and later allowance made by it 41

(2) Rule in United States v. Ludey, 274 U. S. 295..... 43

Cost and *not value* universally adopted as basis by accounting authorities 44

And by the Interstate Commerce Commission..... 47

And by State Commissions..... 49

(3) Knoxville v. Water Co., 212 U. S. 1, supports Commission's contention 50

Other Supreme Court cases cited by Company do not decide question 50

(4) The amount of necessary depreciation allowance is a question of fact 57

III. Real rate of return received by Company greater than 6.26%, but even if this not so Company has not shown that 6.26% is confiscatory when relevant facts are considered.. 58

The Court of Appeals weighed the evidence and decided, on the evidence, in favor of the Commission... 59

Discussion of the evidence on rate of return..... 60

The expert testimony..... 64

(1) First hypothetical question has no proper relation to the question at issue..... 64

(2) Other street railway companies and steam railroads earning less than allowed the Company in this case.. 66, 69

(3) Influence of Company's unbalanced financial structure on its credit 69

Evidence showing decline in interest rates..... 72

(4) Experts gave no consideration to declining costs of capital 74, 75

Rate fixed by Transportation Act, 1920, as reasonable, may yield return lower than that fixed by Commission in this case 76

Authorities as to rate of return..... 80

Most recent cases hold that rate of return comparable to that in this case is reasonable..... 81

In January, 1927, 6% was held reasonable in Virginia 82

In February, 1925, 6% held non-confiscatory in Maryland 83, 84

Opinion of the Commission as to rate of return..... 90

IV. Rates must not exceed the value of the service to the public. The Company has failed to show that a further increase in the rates of fare would not be, under the circumstances, unreasonable to the public..... 93

Authorities 100

Limitation of service value applies with peculiar force where business is as yet undeveloped or when it is in process of decline..... 109

The present value of a street car ride is not in excess of a token charge of 8¾c..... 113

Intrinsic value and economic value..... 119

Pages

V. The action of the Commission in abolishing the second fare on the Company's Halethorpe line was based on substantial evidence and was lawful..... 128

VI. The Maryland statutes, as construed and applied by the Court of Appeals, did not deprive the Company of a judicial review of the question of confiscation..... 131

Conclusion 139

Pages

TABLE OF CASES CITED.

Aluminum Goods Mfg. Co. v. Laclede Gas Light Co. (Mo. P. S. C.), P. U. R. 1927 B, 1 49
Appleby v. New York, 271 U. S. 364 37
Baird v. Burleson (N. Y. P. S. C. 2nd Dist.), P. U. R. 1920 D, 529. 49
Benson v. Public Service Commission, 141 Md. 398 134
Big Spring Electric Company (Utah P. S. C.), P. U. R. 1927 A, 655 50
Bluefield Company v. Public Service Commission, 262 U. S. 679 ..... 50, 53, 60, 74, 88, 91
Brooklyn Union Gas Company v. Prendergast, 7 Fed. (2d) 628.. 63, 87
Brush Electric Company v. Galveston, 262 U. S. 443 ..... 50, 53
Butler Telephone Company (Ind. P. S. C.), P. U. R. 1927 C, 800. 49
Cambridge Electric Light Company v. Atwill, 25 Fed. (2d) 485.. 81
Cedar Rapids Gas Light Company v. City of Cedar Rapids, 223 U. S. 655 24
Chesapeake and Potomac Telephone Company v. Virginia, 147 Va. 43 82
Chesapeake and Potomac Telephone Company v. Whitman, 3 Fed. (2d) 938 ..... 33, 63, 68, 83
Chicago, M. and St. P. R. Co. v. Minnesota, 134 U. S. 418.... 100, 102
City of Albany v. United Traction Co. (N. Y. P. S. C.), P. U. R. 1927 D, 637 114
Coast Gas Company (N. J. Bd. of P. U. C.), P. U. R. 1923 A, 349 50
Collector v. Day, 11 Wall. 113 38
Consolidated Gas Co. of N. Y. v. Prendergast, 6 Fed. (2d) 243... 86, 87
Covington and Lexington Turnpike Road Co. v. Sandford, 164 U. S. 578 ..... 100, 102
Danbury v. Danbury and B. Gas and Electric Light Co. (Conn. P. S. C.), P. U. R. 1921 D, 193 100
Darnell v. Edwards, 244 U. S. 564 ..... 100, 111, 138
Dayton-Goose Creek Railway Company v. United States, 263 U. S. 456 ..... 39, 77, 78, 88
Denny v. Pacific T. & T. Co., 48 Sup. Ct. 222 89
Donham v. Public Service Commission, 232 Mass. 309, 122 N. E. 397 115
Duluth Railway Company (Minn. R. R. and W. Comm.), P. U. R. 1927 A, 41 50
Elizabethtown Water Company (N. J. Bd. of P. U. C.), P. U. R. 1927 E, 39 50
Fett v. Firth (Cal.), P. U. R. 1922 B, 505 110
Freeport v. Freeport Gas Company (Ill. Commerce Comm.), P. U. R. 1924 E, 99 49
Galveston Electric Company v. Galveston, 258 U. S. 388..... 33, 80, 92
Georgia Rwy. and P. Co. v. R. R. Comm. of Ga. (U. S. D. C. N. D. Ga.), P. U. R. 1925 A, 546 54
Georgia Railway Company v. Railroad Commission, 262 U. S. 625 ..... 50, 53, 57, 92
Greencastle Water Works v. Public Service Commission of Indiana, 31 Fed. (2d) 600 ..... 62, 81
Hamilton v. Caribou W., L. and P. Co. (Me.), P. U. R. 1922 E, 801, 804 101

Pages

Havre de Grace Bridge Company v. Public Service Commission, 132 Md. 16 ..... 27, 28, 134, 135
Huntington v. Attrill, 146 U. S. 657 39
Idaho Power Company v. Thompson, 19 Fed. (2) 547 ..... 62, 89
Interstate Commerce Commission Report on Depreciation Charges, 118 I. C. C. 295 47
Inerstate Commerce Commission v. Union Pacific Railway Co., 222 U. S. 541 135
Jackson County Light, Heat and Power Company (Mo. P. S. C.), P. U. R. 1926 D, 737 49
Kansas City v. Kansas City L. and P. Co. (Mo.), P. U. R. 1918 C, 659 101
Kansas City Gas Company (Mo. P. S. C.), P. U. R. 1925 A, 653 .. 49
Kelle. v. Potomac Electric Power Co., 261 U. S. 428, 445 ..... 133, 136
Kings County Lighting Co. v. Prendergast, 7 Fed. (2d) 192 ..... 86, 88
Kinloch-Bloomington Telephone Company (Ill. Commerce Comm.), P. U. R. 1927 E, 135 49
Knoxville v. Water Company, 212 U. S. 1 50
Lehigh Valley Railroad Co. v. Board of Public Utility Commissioners, 278 U. S. 24 135
Lincoln Gas Company v. Lincoln, 250 U. S. 256 74
McCardle v. Indianapolis Water Co., 272 U. S. 400 88
Michigan P. U. C. v. Mich. S. Tel. Co., 228 Mich. 658 56
Miles v. Public Service Commission of Maryland, 151 Md. 337 ..... 15, 28, 29, 30, 134
Milwaukee Electric R. and L. Co. v. Milwaukee (Wis. R. R. Comm.), P. U. R. 1918 E, 1 49
Minnesota Rate Cases, 230 U. S. 352 ..... 50, 52
Missouri Union Telephone Company (Mo. P. S. C.), P. U. R. 1926 A, 842 49
Monroe Gas L. and F. Co. v. Mich. P. U. C., 11 Fed. (2d) 319 89
New York and Queens Gas Co. v. Prendergast, 1 Fed. (2d) 351 .. 86, 87
New York and Richmond Gas Co. v. Prendergast, 10 Fed. (2d) 167 87
New York Telephone Co. v. Prendergast, 300 Fed. 822 86
New York Telephone Co. v. Prendergast, 11 Fed. (2d) 162 87
New Orleans Water Works Company v. Louisiana Sugar Refining Company, 125 U. S. 18 38
Ohio Valley Water Co. v. Ben Avon Borough, 253 U. S. 387 .. 131, 136, 137
Ottinger v. Brooklyn Union Gas Co., 272 U. S. 579 ..... 86, 87, 88
Ottinger v. Consolidated Gas Company, 272 U. S. 576 ..... 86, 87
Pacific Gas and Electric Company v. City of San Francisco, 265 U. S. 403 36
Pacific Tel. and Tel. Co. v. Whitcomb, 12 Fed. (2d) 279 89
Pennsylvania Railroad Co. v. Public Service Commission, 126 Md. 59 134
Portland Railway, Light and Power Co. v. Railroad Commission of Oregon, 229 U. S. 397 130
Public Service Commission v. Byron, 153 Md. 464 ..... 134, 135, 138
Public Service Commission v. East Providence Water Co. (R. I.), 136 Atl. 447 100

Pages

Public Service Commission v. Northern Central Railroad, 122 Md. 355 ..... 134, 135
Public Service Commission v. United Railways and Electric Company of Baltimore, 155 Md. 572..... 2, 9
Puget Sound Traction, Light and Power Co. v. Reynolds, 244 U. S. 574 130
Re Alton G. and St. L. Traction Co. (Ill.), P. U. R. 1919 F, 136.. 107
Re Bennington Water Works Co. (N. H.), P. U. R. 1922 B, 385.. 101
Re Capital City Water Co. (Mo.), P. U. R. 1918 D, 96..... 100
Re Castine Water Co. (Mo.), P. U. R. 1924 B, 529..... 100
Re Fishkill Elec. Rwy. Co. (N. Y. P. S. C. 2nd Dist.), P. U. R. 1919 D, 1..... 106
Re Fonda, J., etc. R. Co. (N. Y. P. S. C.), P. U. R. 1927 B, 762.. 113
Re Helena L. and R. Co. (Mont. P. S. C.), P. U. R. 1925 E, 1.... 108
Re Idaho Power Company (Ida.), P. U. R. 1924 C, 731..... 100
Re Illinois Northern Utilities Commission (Ill.), P. U. R. 1920 D, 979 110
Re Ithaca Traction Corp. (N. Y. P. S. C. 2nd Dist.), P. U. R. 1919 B, 616 108
Re Leadville Water Co. (Colo.), P. U. R. 1921 D, 172..... 110
Re Lewistown Gas Light Co. (Me.), P. U. R. 1921 A, 561..... 101
Re Manchester and D. St. R. Co. (N. H.), P. U. R. 1916 F, 526.. 100
Re Middlesex and Boston Street Railway Co. (Mass. P. S. C.), P. U. R. 1919 F, 40..... 117
Re Pacific Electric Rwy. Co. (Cal.), P. U. R. 1922 C, 134..... 106
Re Public Franchise League, 24 Mass. G., and E. L. C. R. 20.... 100
Re Richmond L., H. and P. Co. (Ind.), P. U. R. 1917 B, 300..... 100
Re San Diego Consol. G. and E. Co. (Cal.), P. U. R. 1919 D, 924. 100
Re Western New York and Pennsylvania Traction Co. (N. Y.), P. U. R. 1920 A, 951..... 114
Rockford Gas L. and Coke Co. (Ill. Commerce Comm.), P. U. R. 1922 E, 756 49
St. Louis and O'Fallon R. Co. v. U. S., 73 L. ed. 457..... 69, 77, 78, 79
San Diego L. and T. Co. v. National City, 174 U. S. 739..... 100, 104
Simpson v. Shepherd, 230 U. S. 352..... 100, 105
Smyth v. Ames, 169 U. S. 466..... 26, 27, 36, 100, 103
Southern Bell Tel. Co. v. Rwy. Comm. of S. C., 5 Fed. (2d) 77... 89
South Carolina v. United States, 199 U. S. 437..... 38
Southern Railway Company vs. Kentucky, 274 U. S. 76..... 26, 30
Southwestern Bell Telephone Company v. Public Service Commission, 262 U. S. 274..... 50, 53, 105
State ex rel. Hopkins v. Southwestern Bell Telephone Company, 115 Kan. 236 56
United Fuel Gas Company v. R. R. Comm., 13 Fed. (2d) 510.... 56
United Railways and Electric Company v. West et al., 145 Atl. 340 ..... 2, 10
United Railways and Electric Company v. West et al., 278 U. S. 567 9
United States v. American Railway Express Company, 265 U. S. 425 35

Pages

United States v. Ludey, 274 U. S. 295 ..... 43, 44, 45
Virginian R. Co. v. United States, 272 U. S. 658 90
West v. United Railways and Electric Company, 278 U. S. 567 ... 9
Wisconsin-Minnesota Light and P. Co. (Wis. R. R. Comm.), P. U. R. 1920 D, 428 49
Wisconsin-Minnesota L. and R. Co. v. Railroad Commission, 183 Wis. 96, 99 ..... 33, 34
Wood v. Elmira Light, Water and Railway Company (N. Y. P. S. C.), P. U. R. 1927 B, 400, 464 117

TEXTBOOKS AND ENCYCLOPEDIAS CITED.

Hayes, Public Utilities, Their Fair Present Value and Return, 33. 55
Lawrence, Cost Accounting, (1926), 308 47
Lyndon, Rate Making For Public Utilities, 17 55
Md. P. S. C. Rep. No. 10, 39 109
1 Montgomery, Auditing Theory and Practice, (1921), 634 46
Powelson, Introductory Accounting, 398-405 46
Spurr, Guiding Principles of Regulation, Vol. 3, p. 530 ..... 101, 131
Whitten-Wilcox, Valuation of Public Service Corporations, 2 Ed., 1928, Vol. 2, p. 1829 48

TABLE OF STATUTES CITED.

Bagby's Annotated Code of Maryland, Vol. 1, Art. 23, Sections 404, 405, 406, etc. 131
Same, Sec. 365 129
Transportation Act, 1920, 41 Stat. at L. 76

In The

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 55.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, *Appellant*,

versus

HAROLD E. WEST, Chairman, J. FRANK HARPER and STEUART PURCELL, Members, Constituting the PUBLIC SERVICE COMMISSION OF MARYLAND, *Appellees*.

No. 64.

HAROLD E. WEST, Chairman, J. FRANK HARPER and STEUART PURCELL, Members, Constituting the PUBLIC SERVICE COMMISSION OF MARYLAND, *Cross-Appellants and Petitioners*,

versus

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE,
Cross-Appellee and Respondent.

Cross-Appeal from and Writ of Certiorari to the Court of Appeals of the State of Maryland.

BRIEF FOR THE PUBLIC SERVICE COMMISSION OF MARYLAND, APPELLEES AND CROSS-APPELLANTS AND PETITIONERS.

Statement of the Case.

The Appellant will be herein referred to as the "Company." The Appellees (who are also cross-appellants and petitioners and constitute the Public Service Commission of Maryland) will be referred to as the "Commission."

The opinion of the Court of Appeals of Maryland has not yet been officially reported, but see *United Railways and Electric Company vs. West, et al.*, 145 Atl. 340 (Record 1712-1716). See also opinion on first appeal to the Court of Appeals of Maryland, reported in *Public Service Commission vs. United Railways and Electric Company of Baltimore*, 155 Md. 572 (R. 1622-1659).

The appellant Company asks this Court to reverse a decree of the Court of Appeals of Maryland which upheld the validity of an order of the appellee Commission fixing the rate of fare to be charged by the Company and abolishing the second fare on its Halethorpe line on the ground that the same is confiscatory. The Commission asks review, by way of cross-appeal and/or writ of certiorari, of the decision of the Court of Appeals of Maryland holding that the Company's annual depreciation allowance must, as a matter of law, be based on the *present value* instead of on the *cost* of the Company's depreciable property.

The Commission contends that even if this Court is without jurisdiction to entertain either its cross-appeal or its petition for certiorari, nevertheless, since the issue of confiscation is involved, this Court will examine the whole record to see whether *in fact* this charge is well founded.

The Company claimed before the Commission and before the Court of Appeals and now claims (1) the right to *increase* its fare to a flat 10 cent fare for adults, a 6 cent fare for children between the ages of four and six years, school tickets at 5 cents each and commutation tickets at special rates; (2) the right to charge a second fare on its Halethorpe line instead of the single fare ordered by the Commission, and (3) an annual depreciation allowance based on the *present value* instead of on the *cost* of its depreciable property.

The Court of Appeals upheld the order of the Commission which (1) *increased* the Company's base rate of fare to 10 cents cash or 8¾ cents when tokens or fare checks are purchased (i. e., four checks for 35 cents), and continued the existing rate of fare for children and for school tickets at 5 cents; (2) abolished the second fare on its Halethorpe line; and (3) decided as a matter of law that the Company's annual depreciation allowance must be based on *present value* and not on *cost*.

The value of the Company's property was fixed by the Commission in accordance with the Maryland law. The effect of this will be commented on at length hereafter. The figure thus found by the Commission was $75,000,000, and on this basis the decision below as to fares and depreciation results in a predicted return to the Company of 6.26 per cent. The Company contends that this rate of return is confiscatory and that any rate of fare which does not give it the opportunity to earn 8 per cent. on the rate base of $75,000,000 is confiscatory.

Originally the Company claimed an annual depreciation allowance, based on value, of $2,200,000. The Commission originally found that a fair allowance for depreciation based on cost would be $883,544. Thereafter as

a result of the decision of the Court of Appeals in the first appeal in this case the Commission found, as it was compelled to do by that decision, that a reasonable allowance on the basis of value was $1,638,660. The Company did not contest, but has accepted, this figure. If the Court of Appeals was wrong in requiring the Commission to base this allowance on value instead of on cost, its action was tantamount to allowing the Company to collect, under the guise of costs, a sum exceeding its real costs by the difference between $1,638,660 and $883,544, or $755,115 by means of the rate of fare fixed by the Commission.

If the fare fixed by the Commission should remain unchanged but the depreciation allowance were changed (as we contend it should be) from the value to the cost basis, the return to the Company would be increased from 6.26 per cent. to 7.155 per cent. If, on the other hand, the claims of the Company were allowed and the number of revenue passengers equaled its predictions, the return would be 8.053 per cent. (See Schedule B at page 145 of Appendix to this Brief.)

Six successive increases in fare have been allowed the Company by the Commission in the period from January 7, 1919, to November 28, 1928, i. e., its base rate of fare has been increased from 5 cents flat, to the present rate of 10 cents flat, 8¾ cents token fare. From 1900 to 1920 the revenue passengers carried by the Company steadily *increased* with the increasing population growth. From 1920 to 1926, though the population steadily increased, the Company's revenue passengers *decreased* 11.29 per cent. The Company has no competition from any other street railway company and it is protected against competition by motor bus lines ("jitneys") though it ope-

rates several such lines itself. The main factor in this loss of revenue passengers referred to is concededly due to the competition of the private automobile. If the rates of fare fixed by the Commission in this case were applied to the volume of the business done by this Company nine years ago, the revenues of the Company would be more than sufficient to yield it the return demanded in this case.

A special problem was thus presented to the Commission, i. e., what was a just and reasonable fare to the Company when loss of revenue was due to increasing loss of patronage.

History of the Case.

The present proceedings were initiated August 1, 1927, when the Company filed with the Commission its application for an increase in rates from 8 cents cash, with two tokens for 15 cents, to a straight 10 cent rate. It asked for both emergency and permanent relief, mentioning, among other things, the growth of the use of the automobile (R. 89-98). The Commission first heard the application for emergency relief, the hearings beginning on September 6th, and ending on September 14, 1927. Having denied the emergency relief asked for, the hearing of the petition for a permanent increase in fare began on October 27, 1927, and the case was submitted to the Commission on the 10th of December, 1927. The citizens of the suburban communities of Halethorpe, Arbutus and Leeds became parties by intervention alleging discrimination in rates against these communities because the length of the street car ride to the center of the city for which they were charged two fares was less than car riders of other communities received for one fare.

In the proceedings before the Commission a State official, designated by law as the People's Counsel, introduced evidence and conducted the case on behalf of the public.

On February 10, 1928, the Commission delivered an elaborate opinion and passed an order denying the full relief asked by the Company but *increasing* the base rate of fare from 8 cents cash, with two tokens for 15 cents, to 9 cents cash or 8⅓ cents, when tokens or tickets are purchased (three for 25 cents). The Commission also made an allowance for annual depreciation of 5 per cent of the Company's gross revenue, the estimate being that $883,544 would be thus provided for the year 1928. Though this allowance, following the practice of the Company since 1912 when it first established an annual depreciation allowance, was fixed at a percentage of the gross revenue, it was concededly designed to produce an annual sum sufficient to provide for necessary retirements of property at their *cost*. By its order the Commission abolished the second fare on the Halethorpe line. The Commission estimated that for the year 1928 the Company would carry in round figures 215,000,000 revenue passengers, would earn a net income of $1,415,606, and would have available for return the sum of $4,731,606, equivalent to a return of 6.26 per cent. (See opinion and order of Commission, R. 14-59; see also Commission's estimate for the year 1928, R. 56.)

On March 13, 1928, the Company filed its bill of complaint in the Circuit Court No. 2 of Baltimore City, seeking to vacate and enjoin this order of the Commission (R. 5-13). The bill alleged that the order was confiscatory under the Fourteenth Amendment of the Constitution of the United States because (1) the fares fixed would yield a return of not more than 6.26 per cent., (2)

the annual allowance for depreciation was inadequate by the sum of $1,316,456 (the difference between $2,200,000, claimed by the Company, and $883,544, allowed by the Commission) and was fixed on an unlawful basis, i. e., on *cost* instead of on *value,* and (3) that the abolishment of the Company's second fare on its Halethorpe line was confiscatory.

In accordance with the Maryland law a duly certified transcript of all papers and proceedings, including evidence in the case before the Commission, was returned to the Circuit Court No. 2 of Baltimore City and was there in evidence, and, the Company not having availed itself of its statutory right to introduce before the Court additional evidence, this transcript furnished the basis for the Court's decision. (Bagby's Annotated Code of Maryland, Vol. 1, Art. 23, Sections 404, 405, 406.)

On May 11, 1928, the Circuit Court No. 2 of Baltimore City entered a final decree sustaining all of the contentions of the Company with the exception of that as to the Halethorpe line and enjoining the Commission from enforcing its order. This decree was accompanied by an opinion of Judge Ulman (R. 65-84) wherein it was held (1) that rates of fare yielding a 6.26 per cent. return were confiscatory and that any rate of fare producing a rate of return lower than 7½ per cent. on value was unreasonably low and confiscatory; (2) that the depreciation allowance should have been based on *value* instead of *cost,* and (3) that the Commission's action as to Halethorpe was lawful.

From this decree the Commission appealed to the Court of Appeals of Maryland, the highest court in the State, and the Company took a cross-appeal (R. 87-88). The questions thereby raised by the Commission were

(1) whether the lower court was right in holding that the rates of fare fixed by the Commission resulted in an insufficient rate of return to the Company, (2) whether the lower court was right in requiring the annual depreciation allowance to be based on value rather than on cost. The question raised by the Company's cross-appeal was whether the lower court was right in sustaining the Commission's order abolishing the second fare zone on the Company's Halethorpe line.

On July 16, 1928, the Court of Appeals reversed in part and affirmed in part the decree of the Circuit Court No. 2 of Baltimore City and remanded the case (through the Circuit Court No. 2 of Baltimore City) to the Commission for further proceedings in accordance with the opinion of the Court of Appeals (R. 1622). The Court of Appeals held (1) that the rate of return of 6.26 per cent. on the value of the Company's property was neither confiscatory nor unreasonable as a matter of law (R. 1647) and that, therefore, the decree of the lower court vacating the order of the Commission fixing the schedule of fares to be charged by the Company and enjoining the Commission's order in that respect was erroneous, (2) that the lower court was right in holding that the annual depreciation allowance should have been based on value and not on cost, but that that part of the decree should neither be affirmed nor reversed but that the case should be remanded in order that the Commission might further consider the question of depreciation, and "make any changes in the rate schedule which may be necessary and requisite to yield to the Company a fair and reasonable return upon the fair value of its property," and (3) that that part of the decree which affirmed the order of the Commission extending the first fare zone of the Halethorpe line to the terminus thereof should be affirmed.

Public Service Commission v. United Railways and Electric Company, 155 Md. 572. (For this opinion of the Court see R. 1622-1653; concurring opinion R. 1653-1654; dissenting opinion by Chief Judge Bond, R. 1655; dissenting opinion by Judge Parke, R. 1656-1659.)

From this decree of the Court of Appeals the Company appealed to this Court. The Commission filed a cross-appeal and also a petition for certiorari. On November 19, 1928, both appeals were dismissed for lack of jurisdiction on the ground that this decree of the Court of Appeals was not final, and the application for certiorari was denied on the same ground (278 U. S. 567).

Meanwhile, and pending action by this Court on the Company's appeal and the Commission's cross-appeal and petition for certiorari, the Circuit Court No. 2 of Baltimore City, pursuant to the mandate of the Court of Appeals, on August 31, 1928 (R. 1680-1681), entered its decree refusing the injunction prayed by the Company and refusing to vacate and set aside the order of the Commission fixing the Company's rates of fare. The decree, however, remanded the proceedings to the Public Service Commission "with directions to further consider the question of depreciation, determine the proper allowance for depreciation in accordance with the opinion of the Court of Appeals and make any change in said rate schedule which may be necessary and requisite to yield to the plaintiff a fair and reasonable return (in accordance with said opinion) upon the fair value of its property."

Pursuant to this direction, the Commission entered upon a rehearing of the proceedings in so far as they concerned the annual allowance for depreciation, heard additional evidence and on November 28, 1928, filed an

opinion and passed an order finding that the proper annual amount to be allowed for depreciation, based on value was $1,638,660 (instead of $883,544 which was the amount previously found by the Commission on the basis of cost). The Commission further found that this increase in the depreciation allowance necessitated a further increase in the rate of fare from 9 cents cash or three tokens for 25 cents, to 10 cents cash or four tokens for 35 cents,—the now existing fare (R. 1685; see also opinion of the Commission on rehearing and order of the Commission, R. 1691-1697).

Thereupon the Company on the 12th day of December, 1928, filed its supplemental bill of complaint in the Circuit Court No. 2 of Baltimore City against the Commission. In this bill it did not question the new and increased depreciation allowance made by the Commission, but it did seek to vacate and enjoin the order of the Commission on the ground that the same was confiscatory under the Fourteenth Amendment because (1) the fares fixed would yield a return of no more than 6.26 per cent. and (2) because of the abolishment of the Company's second fare on its Halethorpe line (R. 1681-1690).

On January 10, 1929, the Circuit Court No. 2 of Baltimore City dismissed the Company's supplemental bill and on the same day the Company appealed from this decree to the Court of Appeals of Maryland. On March 20, 1929, the Court of Appeals affirmed the decree of the Circuit Court No. 2 of Baltimore City dismissing the Company's supplemental bill (R. 1716-1717). *United Railways and Electric Co. v. West, et al., constituting the Public Service Commission of Maryland,* 145 Atl. 340. For opinion of the Court of Appeals see R. 1712-1716.

From this decree of the Court of Appeals the Company again appealed to this Court (R. 1717-1718). The Commission likewise again filed a cross-appeal and a petition for certiorari as a motion in the case (R. 1727-1732).

Assignments of Error on Commission's Cross-Appeal

The errors assigned by the Commission on its cross-appeal are as follows (R. 1732-1733):

"1. That the Court of Appeals erred in not reversing the decree of the Circuit Court No. 2 of Baltimore City, dated May 10, 1928, insofar as said decree adjudged and decreed that the annual depreciation allowance of The United Railways and Electric Company of Baltimore, fixed by Order No. 12,639, of the Public Service Commission of Maryland, passed on February 10, 1928, should be calculated to restore to the said Company the present value of its depreciable property, and that calculating said allowance so as to restore to the Company the cost of its depreciable property, (as was done by the said Commission in the said Order), was confiscatory, and deprived the Company of its property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States.

2. That the Court of Appeals of Maryland erred in holding in its Opinion and Decree dated July 16, 1928, made final by its decree entered March 20, 1929, that the annual depreciation allowance of The United Railways and Electric Company of Baltimore, fixed by the Order No. 12,639 of the Public Service Commission of Maryland, passed on February 10, 1928, so as to restore to the Company the cost of its depreciable property, and not the present value thereof, was confiscatory, and deprived the Company of its property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States."

Outline of Facts in Evidence Before the Commission.

The record contains a reasonably full history of the Company and its operations from the date of its organization by consolidation in 1899 to the date of the hearings in this case. The opinions of the Commission (though not the evidence) in four prior rate cases and the opinion of the Commission (though not the evidence) in the proceedings taken by the Commission in valuing the property of the Company (the "Valuation Case") were offered in evidence before the Commission in the case at bar. (For opinions in prior rate cases see Record as follows: R. 115-148; R. 153-215; R. 220-231; R. 234-243; R. 249-268; R. 269-273. For opinions in "Valuation Case" see R. 279-308; R. 313-334; R. 338-357.) The evidence just referred to was supplementary to the oral testimony taken before the Commission in the case at bar (R. 361-1247) and the exhibits then offered (R. 1348-1614). The two opinions of the Public Service Commission in the case at bar will be found at R. 14-57 and 1691-1695. The opinions of the Court of Appeals of Maryland on the first appeal, both majority and dissenting, will be found at R. 1622-1653; 1653-1654; 1655; 1656-1659, and on the second appeal at R. 1712-1716.

From these sources the following outline of facts in evidence before the Commission is taken.

The present Company was organized on March 4, 1899, by the consolidation of a number of competing street railways serving the City of Baltimore and its suburbs. Its authorized capitalization as of that date was as follows:

1st Consol. Mort. 4% gold bonds	$38,000,000
4% Cumulative preferred stock	14,000,000
Common stock	24,000,000
Total	$76,000,000

Shortly after the consolidation the Company authorized the issue of $14,000,000 of income bonds with which to retire the preferred stock originally authorized.

At the time of the consolidation or shortly thereafter it would seem that all of the first consolidated mortgage bonds and the income bonds, aggregating $52,000,000, were outstanding. It is not clear how much of the common stock was then issued (R. 122-123).

After the Baltimore fire of February, 1904, interest on the income bonds was passed for the purpose of securing funds for track reconstruction and repair and improvements to power houses, etc. In 1906 an agreement was entered into with the holders of such income bonds under which the holders of substantially the entire amount thereof agreed to accept the interest due them from 1904 to 1910 in the shape of 5 per cent. thirty year income funding bonds which were accordingly issued in the amount of $3,920,000. In 1906 it was found that new capital was necessary for terminal stations, car houses, extensions, etc. The existing property, being already heavily encumbered by the outstanding first consolidated 4% bonds and the underlying bonds of certain of the constituent companies, it was necessary to seek some new source of capital. Accordingly the Maryland Electric Railways Company was formed as a subsidiary of the present Company and authorized an issue of $8,000,000 first mortgage 5% twenty-five year bonds. The property thus acquired was leased to the United Company at a rental of 6% on cost thereof and certain additional payments to be made by the United Company (R. 124-125).

In the "Valuation Case" the Commission found it impossible to ascertain the original cost of the property. In that case the Company claimed that this original cost in 1899 was at least $42,000,000. It thus appears that

on the Company's figures the estimated original cost of the property was less by $10,000,000 than its then outstanding funded debt (R. 299).

The record does not show the market value of the Company's securities as of 1927 or 1928. As of January 1, 1924, the outstanding securities at their par value were as follows (R. 298-299):

Stock (par $50 a share)		$20,461,200
Bonds:		
Income	$14,000,000	
Mortgage	51,366,000	
Total of Bonds		$65,366,000
Total par value of securities		$85,827,200

At the same time the market value of these securities indicated by stock market quotations was as follows:

Stock (par $50 a share)		$6,956,808
Bonds:		
Income	$7,210,000	
Mortgage	42,463,010	
Market value of bonds		49,673,010
Total market value of securities		$56,629,818

As of August 31, 1927, there was relatively little change in the capital structure of the Company. On that day it stood as follows (People's Counsel Exhibit No. 52, Sheet 1, R. 1595):

Funded Debt:		
Mortgage Bonds	$46,806,500	
Income Bonds	13,977,000	
Miscellaneous obligations	6,392,700	
Total Funded Debt		$67,176,200
Capital Stock (Par $50 a share)		20,461,200
Total		$87,637,400

The total value of the Company's property as found by the Commission is $75,000,000. The defects in the capital structure of the Company as thus shown and their bearing on the credit position of the Company were the subject of comment in the opinion of the Commission (R. 25-28) and in that of the Court of Appeals (R. 1631-1632; 1640-1641).

The Valuation Case.

The valuation proceedings were begun in 1912 but for various reasons were allowed to lie dormant until early in the year 1925. In accordance with the practice in Maryland the People's Counsel represented the public and had at his disposal both the regular engineering and accounting staff of the Commission and a specially retained consulting engineer. After hearings lasting thirty-one days and three days of argument the Commission on March 9, 1926, rendered its opinion finding the value of the property (excluding "easements") as of January 1, 1924, to be $70,100,645. Though this figure was much less than that claimed by the Company, it did not take an appeal. However, the question having arisen as to whether the right of the Company to operate over the streets of the City of Baltimore (its "easements") constituted property which should be included in the rate base, a majority of the Commission decided in the affirmative (R. 304-307). One of the three members dissented (R. 313-334). This question was taken to the Court of Appeals of Maryland which held that the easements were property and should be included in the rate base, but further held that the Commission in arriving at its estimate of value had done so on erroneous legal principles and remanded the case to the Commission for consideration of the question of value in accordance with the rules laid down by the Court. *Miles v. P. S. C. of Md.*, 151 Md.

337. Thereupon the Commission reconsidered this matter and on February 1, 1928, rendered an opinion and passed an order assigning to the easements a value of $5,000,000 (R. 338-357).

It thus appears that this valuation in its inception long antedated the institution of the present fare case. However, in the present case the Commission, bringing its findings of value as of January 1, 1924, down to date, included the easements and fixed value as of the date of the conclusion of the rate case, February 10, 1928, at $75,000,000 (R. 48-49).

Operations.

Using in all cases round figures, the revenue passengers of the Company *increased* from 89,000,000 in 1900 to 253,000,000 in 1920, the estimated population served having increased from 500,000 to 800,000 during the same period. From 1920 to 1926 the revenue passengers *decreased* from 253,000,000 to 225,000,000, a net decrease of 11.29 per cent.; the estimated population having *increased* during the same period from 800,000 to 843,000. Automobile licenses issued in Maryland increased from 100,000 in 1920 to 267,000 in 1926 (Company Exhibit 11, R. 1406; Company Exhibit 2 A, R. 1389).

The return earned by the Company on the valuation figure of $75,000,000 adjusted for the years in question was as follows (See Appendix to this Brief, Schedule C, page 147):

For the calendar year	1920	5.579%
	1921	4.987%
	1922	5.331%
	1923	5.469%
	1924	5.469%
	1925	5.631%
	1926	5.671%

Including the present case, this is the fifth case in which the Commission has increased the rates of fare of the Company during the period January 7, 1919-November 28, 1928. These figures were as follows:

Jan. 7, 1919	6c flat,
Sept. 30, 1919	7c flat, 6½c token fare,
Dec. 21, 1919	7c flat,
May 26, 1924	8c flat, 7½c token fare,
Feb. 10, 1928	9c flat, 8⅓c token fare,
Nov. 28, 1928	10c flat, 8¾c token fare,

The Company paid no dividends on its stock prior to 1912. In that year it paid $225,000. From 1913 to 1918, inclusive, it paid an average annual dividend of slightly over $818,448; in 1919 it paid $204,612; in 1920 and 1921 the dividend was passed; in 1922 it paid $409,224 and thereafter to and including 1926 it paid $818,448 (People's Counsel Exhibit No. 7, R. 1476).

The Commission estimated that in 1928 the Company would carry 215,397,270 revenue passengers, being a 2% decrease from 1927 (R. 56). The Company, taking the actual number of revenue passengers for nine months in 1927 and estimating the number for the remaining three months, fixed the figure for that year at 219,466,896. It computed the passenger revenue under the 10 cent fare claimed by it on the revenue passengers thus estimated for 1927 with a 5% reduction for the total revenue so determined, thus reflecting its estimate of a 5% reduction in revenue passengers for the year 1928 (Company's Exhibit 24, R. 1428). The following table shows the contrast between the Commission's and the Company's estimates of net income and per cent. of return based on their respective estimates of passengers. (For tables see Appendix to this Brief, Schedule B, page 145).

	Commission		Company	
	Estimated Return at 10c or 4 Tokens for 35c, with depreciation based upon "Value."	Estimated Return at 10c or 4 Tokens for 35c, with depreciation at 5% of Operating Revenue.	Estimated Return at 10c Straight Fare with Depreciation based upon "Value" as determined by Commission. Other figures taken from Company Ex. 24 (R. 1423).	Estimated Return at 10c Straight Fare with Depreciation based upon 5% of Revenue. Other figures taken from Company Ex. 24 (R. 1423).
Gross income	$4,869,521	$5,537,238	$6,211,220	$6,798,636
Net income	1,424,521	2,092,238	2,766,220	3,353,636
Per cent. of return, base of $75,000,000	6.26%	7.155%	8.053%	8.836%

ARGUMENT.

Summary of Argument.

I.

The burden is on the Company to show that the action of the Commission, upheld by the Court of Appeals, its *final result and as a reality* is necessarily confiscatory of its property under the rules of federal law. To succeed it must present a record here which shows that the rate of return, when applied to a rate base arrived at in accordance with federal law, would be confiscatory. Under the rules sanctioned by this Court in confiscation cases, a value much lower than that found by the Commission under Maryland law would have resulted. It is our contention, therefore, that though the Commission established the value it did in accordance with Maryland law, it did so without giving consideration to the loss of value resulting from loss of traffic due to automobile competition, but did consider and give effect to this

factor when fixing the rate of return. In this Court, therefore, the Company must show, but has failed to show, that the result of this action by the Commission necessarily results in the confiscation of its property. The Company cannot have at one and the same time state law as to value and federal law as to rate of return. This Court should therefore affirm the decree on the Company's appeal, even though it may consider a rate of return of 6.26 per cent. too low, because this record on the one hand discloses that the actual return permitted the Company would constitute a much higher percentage of a rate base arrived at by the application of federal rules, and on the other hand does not negative the presumption that so regarded it would constitute so high a percentage of a federal rate base as to meet this Court's approval.

II.

The Commission was compelled by the ruling of the Court of Appeals in this case to fix the depreciation allowance on value instead of on cost. We contend that this view of the Court of Appeals is erronous and contrary to the doctrine of this Court and that consequently the Company is now permitted, under the rates of fare fixed by the Commission, to collect an annual sum for depreciation much in excess of that required to make good the depreciation in fact suffered by it. It is our contention, therefore, that on an issue of confiscation the legal validity of this action of the Court of Appeals will be considered independently by this Court, whether the Commission's cross-appeal or application for certiorari is sustained or not.

III.

The real rate of return received by the Company is greater than 6.26 per cent., but even if this is not so, the

Company has not met the burden of showing that such rate is confiscatory, when the question is considered with relation to all relevant facts.

IV.

Rates must not exceed the value of the service to the public. The Company has failed to show that a further increase in the rates of fare would not be, under the circumstances, unreasonable to the public.

V.

The action of the Commission in abolishing the second fare on the Company's Halethorpe line was based on substantial evidence and was lawful. In a case where, as here, the question is as to the reasonableness of an entire schedule of rates particular rates on particular lines are immaterial if the schedule as a whole is reasonable.

VI.

The Maryland statutes, as construed and applied by the Court of Appeals, did not deprive the Company of a judicial review of the question of confiscation.

ARGUMENT.

I.

The Burden is on the Company to Show that the Action of the Commission, Upheld by the Court of Appeals, in its Final Result and as a Reality is Necessarily confiscatory of Its Property Under the Rules of Federal Law. To Succeed It Must Present a Record Here Which Shows that the Rate of Return, When Applied to a Rate Base Arrived at in Accordance with Federal Law, Would Be Confiscatory. Under the Rules Sanctioned by this

Court in Confiscation Cases, a Value Much Lower Than than Found by the Commission Under Maryland Law Would Have Resulted. It is Our Contention, Therefore, that Though the Commission Established the Value It Did in Accordance with Maryland Law, It Did So Without Giving Consideration to the Loss of Value Resulting From Loss of Traffic Due to Automobile Competition, But Did Consider and Give Effect to this Factor When Fixing the Rate of Return. In this Court, Therefore, the Company Must Show, But Has Failed to Show, that the Result of This Action by the Commission Necessarily Results in the Confiscation of Its Property. The Company Cannot Have at One and the Same Time State Law as to Value and Federal Law as to Rate of Return. This Court Should Therefore Affirm the Decree on the Company's Appeal, Even Though It May Consider a Rate of Return of 6.26 Per Cent. Too Low, Because This Record on the One Hand Discloses That the Actual Return Permitted the Company Would Constitute a Much Higher Percentage of a Rate Base Arrived at by the Application of Federal Rules, and on the Other Hand Does Not Negative the Presumption that so Regarded it Would Constitute so High a Percentage of a Federal Rate Base as to Meet this Court's Approval.

(1) It has been seen that the "Valuation Case" began in 1912 and was conducted as a separate proceeding from the case at bar. In 1926 the value of the Company's property as of January 1, 1924, was fixed by the Commission at $70,000,000, exclusive of easements. The litigation as to easements, above recited, finally terminated in a new finding by the Commission as to their value, which was fixed at $5,000,000, on February 1, 1928. This finding was taken up into the present case and there brought down to date in the opinion of the Commission

filed February 10, 1928. As will be shown, *the Commission did not in the valuation case consider at all the effect on the value of the Company's property which resulted from the falling off in its business on account of private automobile competition.* The Commission's opinion in the *present case,* however, shows that this factor was in the minds of the Commission. As to the adverse effect on the Company's earnings of this relatively new form of competition invading the field theretofore monopolized by the Company there can be no doubt. The Court of Appeals said (R. 1642): "There seems to be no question but that the private automobile is a serious competitor of the Company, and it is estimated that it carries about 25 per cent. of those who would but for it use the street cars, and it is possible that it may make further inroads on its business, regardless of rates." Two possible methods of dealing with such a situation would ordinarily be open to a commission, by either of which a reasonable return would be assured the utility: (1) to reflect the lessened earning power by reducing the value of the rate base, or (2) to apply a reduced percentage rate of return to a rate base of undiminished value. The Commission in this case did not adopt the first alternative and, for reasons to be stated, could not, we submit, have done so under the Maryland law. That the Commission followed the second alternative is plain.

In the valuation case the rate base had been fixed, but the Commission in the fare case was confronted with the fact *that competition had decreased the value of the business.* Obviously such a patent fact could not be ignored. Hence, underlying all the reasoning and the conclusions of the Commission, we find an effort to deal with this condition. Undeniably the existing competition created a "risk." And certainly the risk involved in

loss of patronage could by no possibility have been held to *increase* the value of the business, i. e. the return therefrom. Should, then, this particular kind of risk, under the circumstances, require the Commission in fixing a fair rate of return, to apply to a rate base whose value had been fixed as if this same risk did not exist the same percentage it would, under federal rules, be required to apply to a rate base whose value had been fixed after taking account of such risk? Clearly such a risk must have been given effect by the Commission in some form. The problem was no mere matter of applying to a rate base an arbitrary percentage figure. This the Commission recognized. In dealing with the Company's argument to the effect that because certain utilities had been held entitled to an 8 per cent. return this Company was entitled to more because of the increased risk, the Commission said (R. 38):

> "This Commission feels that the risk of the business, which is largely due to automobile competition, is in fact the element which limits the rate of return which the Company *can earn*, rather than justifies an increasing return, in the same manner that it limits riding." (Italics supplied).

And again the Commission said (R. 39):

> "Now the street car is encountering the competition of the private automobile. That competition cannot be checked by any means now available. The street railway is still a necessary means of transportation and is the only means of handling passengers in large numbers at present available. But it certainly cannot follow that, because it is faced with a serious risk to its future, the risk itself entitles it to a greater return on the value of its property than are those utilities which have no such risk. * * * But the Company cannot depend upon regulation and increasing rates to save it from ultimate disaster, if, because of the automobile, or any other new

> agency of transportation, its service becomes obsolete, and the use of that service is confined to comparatively few people. The Company has been protected from jitney competition and its rates have heretofore been raised to meet increasing costs of rendering service, but there is a limit beyond which the Commission cannot go in permitting higher rates to meet, not increasing costs of doing business, but failure to earn a sufficient return, due to the falling off of business."

What is this but saying that the risk involved in competition has lessened *values?* In making these statements as to this Company and as to street railway companies in general the Commission did nothing other than call attention to the obvious fact that the value of their properties has been commercially lessened by competition. The Commission stated the proposition, however, from the point of view of *earnings* instead of from the point of view of *value;* but this mode of statement cannot alter the fact that the Commission recognized, and properly recognized, *that this Company was unable commercially to earn by the use of its property as much revenue as it could have earned by the use of the same property when it monopolized the field.* We submit that when, as here, the issue is one of confiscation, it is not methods but results which are controlling. Lessened value was an indisputable fact: what the Commission did was to give this fact recognition *not in terms of the rate base but in terms of the rate of return.* Compare *Cedar Rapids Gas Light Co. v. City of Cedar Rapids,* 223 U. S. 655, 670, where this Court in sustaining a rate said:

> "In this case the Court fixed a *value* on the plant *that considerably exceeded its cost,* and estimated that, under the ordinance, the return would be over 6 per cent." (Italics supplied).

The opinions of the Commission in the valuation case (R. 279-308; 313-334; 338-355) show that the method used by it in finding "value" was to estimate the cost, at then prevailing prices, of reproducing new the Company's plant as then existing and, from the figures so found, deducting observed (and not functional) depreciation. Two estimates were before the Commission, that of the People's Counsel and that of the Company. Both the People's Counsel and the counsel for the Company, in preparing their valuation figures, followed the account numbers of the uniform system of accounts of the Public Service Commission, and placed their value on the items as described under the different account numbers (R. 284). The Commission then made its choice. As to the non-physical property, i. e. overheads, the same procedure was followed. It thus appears that, with negligible exceptions, People's Counsel on the one hand and the Company on the other differed only in amounts and not as to *classes* of tangible or intangible property which should be included in the rate base. And as stated the Commission made its choice between the two estimates. (See table of comparison facing R. 308). There is not a word in the opinion of the Commission *in this valuation case* as to the amount of traffic then actually available to the Company. It is true that in 1925 and 1926 when most of the engineering work leading up to the valuation was done the situation as to automobile competition was not as acute as it had become at the time of the hearing in the present fare case. But the traffic carried by the Company had been steadily diminishing since 1920. In 1920 the Company carried (in round figures) 253,000,000 revenue passengers, in 1926, 225,000,000 (Company Exhibit 11, R. 1406). The Commission estimated that in 1928 revenue passengers would be still further reduced to 215,000,000 (R. 56). Under the fed-

eral rules of law weight must be attached to such facts. See *Southern Rwy. Co. v. Kentucky*, 274 U. S. 76, 82, where it was said: "Much weight is to be given to present and prospective earning capacity at rates that are reasonable, *having regard to traffic available and competitive and other conditions prevailing in the territories served*" (Italics supplied). Not only was no effect in fact given by the Commission to the traffic available to the Company, *but a value was assigned to its property as if it enjoyed a monopoly of all the transportation business in the city and had no competition at all.* Moreover the plant was envisaged as if it had been reproduced new and was ready to begin operations with all the benefits resulting from its past experience; that is to say, it was allowed a "going value" of $8,560,210, or 12½ per cent. of the value of its physical property and overheads. The Company's claim under this item was $16,000,000 (R. 297). But it is entirely clear that the Commission in reducing the Company's figure for this item did not do so on the ground that automobile competition had supervened. In addition, functional depreciation was not considered. *Thus the Commission fixed the value of the Company's plant exactly as if no adverse change whatever had taken place in the commercial field which it had been designed to serve. The reduced volume of its business was ignored. And the earnings which it might commercially command were given no effect.*

We submit that under the Maryland decisions the Commission could not have done otherwise.

While *nominally* adhering to the rule laid down in *Smyth v. Ames*, 169 U. S. 466, the Maryland cases have in fact excluded, in arriving at value, one element mentioned in that case and which, in the case at bar, assumes

very great importance, just as other elements in the rule have from time to time taken on greater or less degrees of importance under changing conditions. We refer to the statement in *Smyth v. Ames*, that in order to ascertain value "the probable earning capacity of the property under particular rates prescribed by statute * * *" is one element to be considered. The two Maryland cases now to be discussed not only exclude this element, but also exclude from consideration the effect upon value of the commercially possible earnings.

In *Havre de Grace Bridge Co. v. P. S. C.*, 132 Md. 16 (1918), the P. W. & B. Railroad Company found its single track railroad bridge across the Susquehanna River insufficient for its use and obtained assent from the Maryland Legislature and the War Department to the construction of a double track bridge paralleling the old one. As a condition of the grant the company was required to remove the old bridge, which would have entailed expense upon the company. It therefore endeavored to interest the county authorities in a proposition to convert the bridge into a highway bridge maintained by them. Unsuccessful in this, the company finally induced certain individuals to form a corporation to take over, operate and maintain the bridge. At a large expense to itself the railway company adapted the bridge for use as a highway bridge and then transferred it to the corporation. In effect, therefore, the railway made a present of the bridge to the corporation. After several years the bridge company became extraordinarily profitable due to two factors, the development of good roads and increasing automobile traffic. Complaint was soon made to the Public Service Commission of Maryland as to the tolls charged. Complainants claimed that these were unreasonable because the bridge had cost its owners

practically nothing. The bridge company contended that its tolls were reasonable in fact and that the amount of its earnings was therefore immaterial. The Court held that the fair value of the bridge must be determined and a fair rate of return allowed to the company on such value. Obviously the bridge company could *commercially earn* a large revenue, and one of the questions was what effect this should be given in arriving at the value of the bridge. The Court said (page 27):

> "What the Commission in this case was authorized to ascertain under the section referred to was the *fair value* of the property.
>
> "In the rate making cases reported, different starting points have been taken, and the weight accorded to the several factors which enter into such a question have varied greatly. In some that which had most weight with the Commission was the question of the net earnings of the corporation, but 'the fact that the net earnings of the carrier may be large does not of itself justify us in fixing a rate at less than is reasonable for the service all other things being considered.' *R. R. Commissioners v. Ill. Cent. R. R.*, 20 I. C. C. 181.
>
> "This suggests a question, does the reasonableness of valuation depend on the income derived, or the reasonableness of the rate depend on the valuation fixed? The only case which has attempted to give a direct answer on this point is the *Kennebec Water District v. Waterville, supra*, and is to the effect that the reasonableness of the rates is dependent upon the value of the property."

In *Miles v. Public Service Commission*, 151 Md. 337, the question, already herein referred to, was whether the easements of this Company should be included in the rate base at all and, if so, what was the proper basis to be used in arriving at their value. The Court held

that these easements were property and should be included, but that they should be *treated solely as an interest in real estate and that any value attributable to earnings they might produce must be excluded.* The Court was of opinion that since in rate cases the value of a utility's property is to be found for the purpose of fixing its rates, it would be arguing in a circle to determine that value with reference to its earnings from the rates. Prior cases had decided that such easements, for *taxation purposes* must be valued with reference to the extent that such easements were responsible for the corporations earnings. In the instant case the Court distinguished those authorities as follows, at page 342:

> "Neither is it true that because this character of property is designated as an easement or interest in land, and as such is entitled to be accorded some value, it should be given the same value for fixing a rate base as that given it for taxation purposes. On the contrary, there is a controlling reason why the two valuations should not be identical. In the valuation for rate making purposes, property of the public service corporation, the value of which depends upon the earnings of the corporation, should not be included, for the reason that the earnings upon which the value of the property depends are largely controlled and determined by the rate which is allowed to be charged for the service rendered."

There is, of course, a plain distinction between finding value on the basis of capitalized earnings resulting from rates fixed by a regulatory body, and *considering the effect upon the value of property of the earnings which may reasonably be expected to result from the patronage which may be available.* Ordinarily the *use* to which property may be put is an important element in its value; if, for example, a street railway company serves many patrons, it should have a higher value than if it serves

few. But this very factor was expressly excluded in this case. At page 345 the Court continued:

> "We are of the opinion, therefore, that the duty of the commission imposed by the statute is to fix the fair value of the property of the corporation used for the convenience of the public, and that, in fixing the value of the easements for the purpose of a rate base, they are confined to such sum as fairly represents their value as an interest in land, and cannot add to that any value which might be affected by the rate which the corporation may be allowed to charge, *or such value as is dependent upon the use to which the franchise of the corporation permits the easement to be put.*" (Italics supplied).

The rule laid down by the Court of Appeals of Maryland is contrary to the doctrine sanctioned by this Court. In *Southern R. Co. v. Kentucky*, 274 U. S. 76, 82, it was said:

> "The value of the physical elements of a railroad—whether that value be deemed actual cost, cost of reproduction new, cost of reproduction less depreciation or some other figure—is not the sole measure of or guide to its value in operation. • • • *Much weight is to be given to present and prospective earning capacity at rates that are reasonable, having regard to traffic available and competitive and other conditions prevailing in the territory served.*" (Italics supplied).

(2) Apart from the effect of these Maryland cases on the valuation found by the Commission, its action in this case has the effect of a legislative act of the state. It is a state statute which our opponents seek to overthrow. We submit that the burden is on them to prove that the result of this state action is necessarily confiscatory of their property. Using this analogy, can it be doubted that if a state statute denied a public utility the right to earn a return greater than 5 per cent., but at the same

time prescribed that such percentage should be calculated on a valuation of its property to be determined by the highest price level prevailing in the locality within one hundred years next preceding the date of valuation, the result so calculated would not be held confiscatory by this Court merely because the percentage rate of return was, abstractly, deemed to be low, as compared with then existing prices? This must follow from the fact that no utility is entitled to a schedule of fares yielding it any particular percentage rate of return in the abstract, but is only entitled to a return in money resulting from the application of a fair percentage rate to the fair value of its property. The amount in terms of percentage must depend entirely upon the nature and amount of the rate base to which that percentage is to be applied. A return in dollars and cents may represent either a high percentage of a low valuation or a low percentage of a high valuation; and if it is not shown that the result obtained in either way necessarily works a confiscation of property, there is no violation of the Fourteenth Amendment. That is to say, if a proper adjustment is maintained between the two factors of rate base and rate of return, it can make no difference under the Constitution what those two factors are. They must be regarded simply as *measures* of the confiscatory or non-confiscatory character of a sum of money, but they are of no value for this purpose unless they are considered in combination.

Therefore, the Company cannot, as it in this case seeks to do, segregate and consider separately these two factors which, taken together, measure the return in dollars and cents, when what is in issue is in reality the adequacy of the sum itself.

Now it is true that the Commission has found that the property of this Company was worth $75,000,000. It does not, of course, ask this Court to revise that valuation. What the Commission does say, however, and what we contend it has a right to say, is that this Court will, in determining the question of confiscation, recognize that it was reasonable for the Commission under the facts in evidence before it to fix the percentage rate of return so as to reflect the undoubted fact that a new factor (not given effect to in arriving at the rate base) had entered which rendered the rate of return reasonable under the circumstances. Therefore, to justify a reversal of the decree below the record here must satisfy this Court that even if the percentage rate of return was in the abstract low, it was not offset by the allowance to the Company of an unduly liberal valuation.

We submit that it is not enough for the Company to show that the Commission itself has fixed the rate base and then to show that the rate of return is low as compared with other rates, for that would be applying a mere formula without reference to the realities of the situation. What the Company must show here is either (1) that the Commission could not in fixing the percentage rate of return properly reflect therein the lessened value of the property of the Company, or (2) that even if the Commission could adopt this course still the necessary result was confiscatory.

It cannot be denied that whereas a rate base may remain constant, changing conditions, often rapidly changing conditions, may materially affect the percentage constituting a fair rate of return. In essence such changes must necessarily be changes *affecting values*, but it does not follow that a commission is not at liberty to alter

the percentage rate of return allowed a company without first revising the rate base also fixed by it so as to reflect a change in value. This Court has held that on the question of the fairness of the return the fact that a deduction from operating expenses for the federal income tax must be allowed, could be taken into consideration in determining what rate of return should be deemed fair. For, as was said in *Galveston Electric Co. v. Galveston*, 258 U. S. 388, at 399-400: "This tax exemption is, therefore, in effect, part of the return on the investment." The same principle is illustrated in *Chesapeake & Potomac Telephone Co. v. Whitman*, 3 Fed. (2d) 938. In that case, under the particular circumstances, the court took the view that an actual percentage rate of return amounting to but 6 per cent. might have been too low, but notwithstanding that view permitted the commission to fix a schedule of rates which limited the rate of return to 6 per cent. because in substance the actual return permitted the utility included not only the six per cent. rate of return but also additional return in the form of payments made by the utility to its parent company, the American Telephone and Telegraph Company, to cover cost of financing, etc., which payments were allowed as operating expenses.

So long, therefore, as a utility is in reality permitted to receive a fair return, it can make no difference whether it receives that actual fair return in the form of what the state agencies call rate of return or in the form of what they designate as valuation or depreciation allowance. In *Wisconsin-Minnesota L. & R. Co. v. R. R. Comm.*, 183 Wisc. 96, 99, it was said:

> "The constitutional rights of a utility are not invaded by the pursuit of a wrong method of valuation. * * * It is not its method that is to be re-

viewed but the result reached by the commission. The statute charges the commission with the duty of ascertaining and declaring a reasonable rate. If that is done, the method by which the commission arrives at the result is not subject to criticism."

The Commission's cross-appeal in this case was addressed solely to the allowance to the Company of the inflated depreciation allowance, which will be considered in more detail below, but the Commission fixed the value of the Company's property itself and, of course, prosecuted no cross-appeal. It will at once, therefore, be said that the Commission as appellee is attempting by indirection to overturn its own action and to attack the decree below without having resort to a cross-appeal. Not so. The considerations now urged upon this Court by the Commission are clearly in support of the decree in its favor. What the Commission objects to is the attempt of the Company to make the valuation, fixed as it was, an obstacle to consideration by the Commission, when fixing percentage rate of return of facts in evidence which justify that rate.

The rate base was not reduced. The facts in evidence show that the Commission would have been justified in reducing it. We have argued that it could not do so as a matter of Maryland law. The Company demands that the rate base shall stand and that there shall be applied to it a percentage rate of return which would only be justifiable under utterly different conditions. But manifestly, the Company cannot have both an increased rate base and an increased rate of return. That would make the resultant of the two inequitable and unfair. The Company now insists that the percentage rate of return, estimated by the Commission to be 6.26 per cent., be enlarged. If that is done, it will be no more than

fair that the rate base be diminished. In urging on this Court these considerations, the Commission does not in its capacity of appellee seek to enlarge its own rights under the decree, nor to lessen the rights of the Company. Rather is its argument a manifestation that the appellant has failed to demonstrate upon this record that the decree of the court below sustaining the action of the Commission was necessarily wrong in its result and effect, regardless of the reasoning or methods by which it was arrived at. In *U. S. v. American Rwy. Express Co.*, 265 U. S. 425, this Court called attention to the right of an appellee to make such an argument in support of the decree below. At page 435 it was said:

> "It is true that a party who does not appeal from a final decree of the trial court cannot be heard in opposition thereto, when the case is brought here by the appeal of the adverse party. In other words, the appellee may not attack the decree with a view either to enlarging his own rights thereunder or of lessening the rights of his adversary, whether what he seeks is to correct an error or to supplement the decree with respect to a matter not dealt with below. *But it is likewise settled that the appellee may, without taking a cross-appeal, urge in support of a decree any matter appearing in the record although his argument may involve an attack upon the reasoning of the lower court, or an insistence upon matter overlooked or ignored by it.* By the claims now in question, the American does not attack, in any respect, the decree entered below. It merely asserts additional grounds why the decree should be affirmed. These grounds will be examined" (Italics supplied).

And this Court in passing upon questions under the Constitution of the United States, such as the question of confiscation *vel non*, will look through forms to substance and behind the reasoning and methods employed.

If it is not demonstrated to this Court by the appellant that the decree,—not in the steps by which it was arrived at,—but in its result and effect, in substance and in fact deprives the Company of property without due process of law, the decree will be affirmed. In *Pacific Gas & Electric Co. v. City of San Francisco,* 265 U. S. 403, 415, it was said:

> "Our concern is with confiscation. Rate making is no function of the courts; their duty is to inquire concerning *results,* and uphold the guaranties which inhibit the taking of private property for public use without just compensation *under any guise"* (Italics suppied).

On the issue of confiscation, therefore, this Court is not bound by the findings below as to the rate base any more than it is bound by the findings as to the percentage rate of return. Insofar as questions under the Fourteenth Amendment are concerned, a state may place any valuation it pleases on utility property so long as it does not deny a fair return in dollars upon its real value. For example, let us suppose that under the rule of *Smyth v. Ames,* the fair value of the Company's property is in fact $60,000,000; and further, that in Baltimore City at the present time and under the peculiar circumstances surrounding this Company no return amounting to less than 8 per cent. of that valuation would be fair, but that such return, amounting to $4,800,000, would be adequate. Now, if a statute of the State of Maryland should compel the Commission to add $15,000,000 to the Company's valuation, could the Company be permited to argue that this Court is bound to accept, not the true valuation of $60,000,000, but the inflated valuation of $75,000,000, and that this Court must apply thereto a percentage rate of return of 8 per

cent. and thereby determine that the return of $4,800,000 was confiscatory?

Cases arising under the contract clause (Constitution of the United States, Art. 3, Sec. 10) are ample authority for the legal principle here invoked. Where rights under the Constitution of the United States are drawn into question, it becomes the function and duty of this Court *itself to examine into and determine* the bases of the challenged decree. That principle was discussed at length in the opinion of this Court delivered by the Chief Justice in *Appleby v. New York*, 271 U. S. 364, 379-380, as follows:

> "The questions we have here to determine are, first, was there a contract, second, what was its proper construction and effect, and, third, was its obligation impaired by subsequent legislation as enforced by the state court? *These questions we must answer independently of the conclusion of that court.* Of course, we should give all proper weight to its judgment, but we cannot perform our duty to enforce the guaranty of the Federal Constitution as to the inviolability of contracts by state legislative action unless we give the question *independent consideration.* It makes no difference what the answer to them involves, whether it turns on issues of general or purely local law, *we cannot surrender the duty to exercise our own judgment.* In the case before us, the construction and effect of the contract involved in the deeds and covenants depend chiefly upon the extent of the power of the State and city to part with property under navigable waters to private persons, free from subsequent regulatory control of the water over the land and the land itself. That is a state question, and we must determine it from the law of the state, as it was when the deeds were executed, to be derived from statutes then in force and from the decisions of the state court then and since made; but *we must give our own judgment derived from*

such sources and not accept the present conclusion of the state court without inquiry.

"Ordinarily this Court must receive from the court of last resort of a state its statement of state law as final and conclusive, but the rule is different in a case like this" (Italics supplied).

And the rule is no different in cases where the state court has resolved some element of the question against the state and in favor of the party complaining. In such a case also this court will go behind the determination of the state court to see whether the step taken toward the final result was in fact what it purported to be as tested by this Court's own independent judgment. In *New Orleans Water Works Co. v. Louisiana Sugar Rfg. Co.*, 125 U. S. 18, 38, Mr. Justice Gray said:

"When the state court holds that there was a contract conferring certain rights, and that a subsequent law did not impair those rights, this court has jurisdiction to consider the true construction of the supposed contract; and if it is of opinion that it did not confer the rights affirmed by the state court, and therefore its obligation was not impaired by the subsequent law, it may on that ground affirm the judgment."

Nor is the principle confined to questions arising under the contract clause, but extends to and embraces questions arising under any of the constitutional guaranties. So in *South Carolina v. United States*, 199 U. S. 437, this Court determined for itself, regardless of the determination of the state of South Carolina, whether a state conducted liquor business is in fact a state governmental function which can escape federal taxation under the doctrine of *Collector v. Day*, 11 Wall. 113.

And if the highest court of a state declines to give full faith and credit to a judgment of another state because in

its opinion that judgment was for a penalty this Court in determining whether full faith and credit have been given to that judgment must decide for itself whether the original cause of action was penal in the international sense. See *Huntington v. Attrill*, 146 U. S. 657, 684.

The converse of the argument above presented was made in this Court by the appellant in the case of *Dayton-Goose Creek Rwy. Co. v. U. S.*, 263 U. S. 456. In sustaining the validity of the recapture provisions of the Esch-Cummins Act, this Court since it appeared from the record that the utility involved, even after the statute was applied to its earnings, would still be earning in excess of 8 per cent. upon its fair value, refused to commit itself to what its determination might be if in a particular case the application of the statute should prevent a particular carrier from earning more than a low percentage rate of return. The appellant attempted to argue that the rate base had been fixed at too low a figure and in disregard of its earning power and hence that the return permitted it in dollars and cents was in fact not higher than 6 per cent. of its true valuation. Obviously this argument would have been sound, if the record in the case, for which the appellant was responsible, had clearly disclosed that an error as to valuation had been committed below, and the extent of that error. This Court, in its opinion delivered by the Chief Justice, said nothing to impugn the validity of the argument itself but refused to consider it because the contention was not supported by the facts in the record. The Court said, page 486:

"It is also said in argument that the value of the carrier's property upon which the net income was calculated was too low and was unfair to the carrier. The value of the property, it is argued, depends on the profit to be expected from its use, and should be calculated on the income from rates pre-

vailing when the law was passed, which must be presumed to have been reasonable. The true value of the carrier's property would thus be shown to be so much higher than reported that the actual return would be no higher than 6 per cent. of it, and there would be no excess.

"We do not think that, *with the record as it is, such an argument is open to the appellant.* It did allege that the values upon which the return was estimated were not the true values, but it did not allege what the true values were. This was not good pleading and did not properly tender the issue on the question of value." (Italics supplied).

But although it may be denied to the appellant to urge against the validity of a decree or legislative act, carrying with them the presumption of constitutionality and correctness, a supposed error, unless he has inserted in the record facts which clearly demonstrate that an error was committed below and the extent of the error making it overwhelmingly plain, not only that an error in reasoning and method was made, but that such error has affected the final decree, nevertheless it may well be open to the appellee to urge in support of a decree considerations appearing in the record which indicate that the decree was proper in its final result and which have not been negatived by the appellant.

II.

The Commission Was Compelled by the Ruling of the Court of Appeals in this Case to Fix the Depreciation Allowance on Value Instead of on Cost. We Contend that this View of the Court of Appeals is Erroneous and Contrary to the Doctrine of this Court and that Consequently the Company is Now Permitted, Under the Rates of Fare Fixed by the Commission, to Collect an

Annual Sum for Depreciation Much in Excess of that Required to Make Good the Depreciation in Fact Suffered by It. It is Our Contention, Therefore, that on an Issue of Confiscation the Legal Validity of this Action of the Court of Appeals Will Be Considered Independently by this Court Whether the Commission's Cross-Appeal or Application for Certiorari is Sustained or Not.

(1) The original claim of the Company was for an annual depreciation allowance of $2,200,000. The Commission allowed $883,544 (R. 39-48). On the Company's first appeal the Court of Appeals held that the Commission had made an error of law in calculating this allowance on the basis of cost and not value and remanded the case to the Commission (through the Circuit Court No. 2 of Baltimore City) with instructions to recalculate the allowance using value as the basis (R. 1647-1653; 1680). Thus compelled, the Commission recalculated the allowance on the basis of the present value of the Company's depreciable property and increased the same to the sum of $1,638,660 which it found was equal to a rate of 3.6 per cent. on the value of the Company's depreciable property. Though the sum allowed by the Commission fell short of that originally demanded by the Company by the amount of $561,340 and though the whole argument of the Company to the effect that annual depreciation must be calculated on value instead of on cost rests on the proposition that only thus can a gradual confiscation of the Company's *property* be avoided, *nevertheless the Company did not appeal from this second allowance made by the Commission.* Therefore, it has *accepted* according to its own theory a property loss of $561,340 per annum.

In the Court below it was assumed that the method first adopted by the Commission was to base the allow-

ance on cost, i. e. so as to provide for retirements at cost. In fact, however, the allowance was expressed as 5 per cent. of the gross revenue of the Company, this percentage having been found sufficient in the past to permit retirements at cost.

Prior to 1912 the Company set up no annual depreciation allowance at all. Since that time, and until the inception of the present case, it set up 5 per cent. of gross revenue for this purpose. The Court of Appeals (R. 1649) held that "there is no apparent connection or relation between the income which property yields and the depreciation resulting from its use in earning that income." But the fact is that in practice annual depreciation expense is often expressed as a percentage of gross revenue; sometimes as so many cents per car mile and sometimes it is combined with the annual maintenance charge (as a percentage of gross) and sometimes the allowance is based on the amount of capital stock. Each of these methods has certain advantages. One of the Company's witnesses, Mr. Nash (R. 839-840), testified that there were certain practical advantages in fixing the allowance upon gross earnings. Another Company witness, Mr. Zimmerman of Day and Zimmerman, contended, in one of the prior rate cases, that the allowance should be fixed at three cents per car mile (R. 171). The advocates of this latter method claim that, particularly in regard to rolling stock, the number of car miles operated has a direct relation to the depreciation of the equipment. Obviously the number of car miles operated has its reflection in the gross earnings, so that it cannot be said that fixing the allowance at a percentage of gross has no relation to the depreciation actually experienced.

In this connection it should be noted that Mr. Zimmerman gave his testimony in a prior rate case in 1919.

During that year the total car miles operated by the Company was 35,324,733 (R. 169), and on the basis of three cents per car mile annual depreciation would then have been $1,059,741.99. In 1919 costs were higher than in 1926, 1927 or 1928. In the case at bar the car miles operated by the Company for the year 1926 (the last year for which figures are available) amounted to 35,304,583 (Company Exhibit No. 17, R. 1417). Applying Mr. Zimmerman's figure of three cents per car mile, the annual depreciation charge would in 1926 have been $1,059,137.49,—*less, by* $579,522.51, *than that now in effect.*

The effect of the allowance of 5 per cent. on gross is shown by the actual experience of the Company.

The Commission found (R. 45):

> "However, the allowance which this Commission has made for depreciation, 5 per cent. of the gross revenues, has provided fairly well for current depreciation and retirements and has permitted the accumulation of a reserve amounting to $1,413,793 on August 31, 1927. This percentage of gross revenues for depreciation has been set up by the Company since 1912, and in that time it had amounted to $10,537,960."

Further, it was found that the Company's property was well maintained (R. 48).

(2) In *U. S. v. Ludey*, 274 U. S. 295, this Court considered the question of the basis on which to calculate, under the income tax law, the profit realized upon a sale of property. It was held that the annual depreciation must be deducted from the original cost (or the value, if higher than cost, of that acquired before 1913) in order to ascertain the cost of the property sold. This Court said (pages 300-301):

> "The amount of the allowance for depreciation is the sum which should be set aside for the taxable year, in order that, at the end of the useful life of the plant in the business, the aggregate sum set aside will (with the salvage value) *suffice to provide an amount equal to the original cost.*" (Italics supplied).

The property in question in the case consisted besides mining equipment in part of oil land. No distinction, however, was made between such property and that used in any other business, the Court saying (page 301):

> "Such being the rule applicable to merchandising and mercantile businesses, no good reason appears why the business of mining should be treated differently."

As appears from the above, some of the property in question had been acquired prior to March 1, 1913, at a cost *less* than its *value* on that date. No distinction, however, is made in the opinion in the treatment of this property insofar as the depreciation allowance was concerned.

The rule thus announced by this Court is the rule universally followed and practiced by accountants. It is no mere bookkeeping formula, but is a rule of substance. Every business which determines the results of operations does so by applying the principles of accounting. The net income or loss is an accounting conception. Myriads of statements prepared annually, designed to show the realities as to the operations of businesses, are prepared in accordance with the well established, uniform and widely recognized principles of the science of accounting. In computing net incomes, accordingly, all expenses, costs and losses are deducted from the revenue. Depreciation is one of the most important ex-

penses. In early days, however, it was not recognized. And, when a depreciable asset was worn out, the cost thereof was charged to the income of the year in which the asset was discarded. Consequently, that one particular year bore the entire burden of the cost of the asset with the resultant distortion of profits, although, in fact the asset had been gradually used up during the whole period of its useful existence. Later it was recognized that a machine or any other depreciable asset is consumed in operation in exactly the same sense as raw material and labor are consumed and that each year's operations should therefore bear the cost of that part of the machine consumed during that year. "The theory underlying this allowance for depreciation is that by using up the plant a gradual sale is made of it. The depreciation charged is the measure of the cost of the part which has been sold." *U. S. v. Ludley, supra,* at page 301. Now, if a corporation purchases very large quantities of raw materials at very favorable terms and prior to consumption the market value goes up, it would not be argued that its raw material expense should be increased, for, in fact, that expense has not increased. To argue that depreciation expense should be based upon theoretical present values rather than upon actual cost is tantamount to arguing that the raw material in the illustration just given should be taken as an expense at present market value rather than at cost. Since all of the property, including raw materials and supplies, of a business is gradually being sold or consumed as a result of its operations, the only difference between classes of property is that some classes are consumed within a relatively short period of time whereas other classes of property have a longer life. Time, therefore, and time alone, is the varying element and it is submitted that time

is not such a factor as to justify the enormous difference in treatment contended for by the Company in this case.

In 1 *Montgomery, Auditing Theory & Practice* (1921) page 634, it is said:

> "The question of depreciation should be considered only in connection with the cost of the item to be depreciated. The fact that the value of the property has increased or decreased and that the cost of replacements may be greater or less, should have no bearing on the amount to be set aside. However, if, for instance, it is the intention of the management to purchase replacements costing double the price of the original property without new financing net amounts should be reserved for this purpose from surplus."

> "We often see a statement in published reports that a corporation has realized a net income amounting to a certain sum and that out of this net income an allowance for depreciation has been made. It is just as logical to state that a candy manufacturer has an earned income of one thousand dollars and out of said one thousand dollars there has been set aside twenty thousand dollars to pay for the sugar consumed in the manufacture of the candy. The use of that which is consumed is a loss or expense. Machinery is consumed; sugar is consumed. You cannot say that one is an operating expense and the other is an item which need not be ascertained or taken into account until the net income is shown."

In *Powelson, Introductory Accounting,* it is said at pages 398-405:

> "Theoretically, to exclude depreciation among the expenses may be a grave oversight. For instance, the loss incident to the wear and tear of a machine used to manufacture an article, is as much a part of the cost of the article as the raw material used, be-

cause the machine itself is consumed in the process of manufacture; and yet if the manufacturer does not recognize this fact, he may sell his product at a loss. The cost of a worn out machine is an expense or a loss to the business no less than the cost of one destroyed in an accident. * * * The total depreciation to be charged for any given asset is its cost less scrap value."

In *Lawrence on Cost Accounting* (1926), page 308, it is said:

"It is believed that it is not in accordance with sound accounting principles to charge depreciation on replacement values. The purpose of depreciation is to protect capital tied up in fixed assets against loss due to wear and tear, action of the elements and other elements which affect the usefulness of the asset. The amount of capital invested in the asset is to be kept at its original amount through credits to the depreciation reserve, but this does not imply that the capital is to be increased or diminished in accordance with price fluctuations. In other words, the depreciation reserve is not intended to guarantee the purchasing power of the dollar."

The Interstate Commerce Commission in an exhaustive report dealing with the depreciation charges of telephone companies and of steam railroad companies, 118 I. C. C. 295, at pages 342, 343 and 344 said:

"We further find that depreciation is the loss in service value not restored by current maintenance other than extraordinary repairs, as defined in finding (2) infra, and incurred in connection with the consumptiton or prospective retirement of property in the course of service from causes against which the carrier is not protected by insurance, which are known to be in current operation and whose effect can be forecast with a reasonable approach to accuracy * * *. The term 'service value' shall be construed to mean the difference between the original

cost of the property involved plus the additions and replacements thereto, including the applicable portion of interest during the construction, and the estimated salvage value at the time of retirement. It is the cost of the investment which must be provided for through depreciation charges. * * * It is agreed by all that depreciation expense should be based primarily upon the original cost to the accounting company of the unit of property in question. The principle is precisely the same in the case of the expense incurred over a period of years in the consumption of long-lived property in service, as it is in the case of the expense incurred in the more immediate consumption of such property as coal."

The posititon of the American Telegraph & Telephone Company on this subject is thus set forth in *Whitten-Wilcox, Valuation of Public Service Corporations* (2d Ed. 1928, Vol. 2, page 1829):

"(a) Accruals should be based on original cost or investment.

"All telephone property, excepting land, is subject to depreciation and the continual consumption of the investment is a part of the cost of the service and must be provided for by charges against earnings.

"The sound theory is that the charges to the reserve for depreciation should be based on the original cost of the property retired, less the net salvage credit. This is demonstrated by the following considerations:

"(1) The function of the depreciation reserve is to amortize the portion of the expense of conducting the business caused by using up its depreciable property.

"(2) The actual amount of this expense is the original cost of its property less net salvage credit.

"(3) This mthod is equitable in that it provides for the amortization of the actual investment during the period it is consumed in rendering the service.

"(4) Upon this theory the amount to be created by the reserve is definite and fixed so that the periodical charges to operating expenses on account of the reserve can be made certain.

"(5) This method tends to certainty and definiteness in the accounting."

The practice of commissions has been to base depreciation on cost.

Missouri Union Telephone Co. (Mo. P. S. C.) P. U. R. 1926 A, 842, 849.
Kansas City Gas Co. (Mo. P. S. C.) P. U. R. 1925 A, 653, 663.
Jackson County Light, Heat and Power Co. (Mo. P. S. C.) P. U. R. 1926 D, 737, 754.
Aluminum Goods Mfg. Co. v. Laclede Gas Light Co. (Mo. P. S. C.) P. U. R. 1927 B, 1, 43.
Kinlock-Bloomington Teleph. Co.(Ill. Commerce Comm.) P. U. R. 1927 E, 135, 143.
Freeport v. Freeport Gas Co. (Ill. Commerce Comm.), P. U. R. 1924 E, 99, 103.
Rockford Gas Light & Coke Co. (Ill. Commerce Comm.), P. U. R. 1922 E, 756, 761.
Rockford Electric Co. (Ill. Commerce Comm.), P. U. R. 1925 D, 1954, 166.
Baird v. Burleson (N. Y. P. S. C. 2nd Dist.), P. U. R. 1920 D, 529.
Milwaukee Electric R. & L. Co. v. Milwaukee, (Wis. R. R. Comm.), P. U. R. 1918 E, 1, 58.
Wisconsin-Minnesota Light and P. Co. (Wis. R. R. Comm.), P. U. R. 1920 D, 428, 435.
Butler Telephone Co. (Ind. P. S. C.), P. U. R. 1927 C, 800, 804.

Coast Gas Co. (N. J. Bd. of P. U. C.), P. U. R. 1923 A, 349, 366.
Elizabethtown Water Co. (N. J. Bd. of P. U. C.), P. U. R. 1927 E, 39, 63.
Duluth Railway Co. (Minn. R. R. and W. Comm.), P. U. R. 1927 A, 41, 53.
Big Spring Electric Co. (Utah P. S. C.), P. U. R. 1927 A, 655, 666.

(3) In the Court below the Company cited the following cases from this Court as sustaining its position:

Knoxville v. Water Co., 212 U. S. 1, 13-14.
Minnesota Rate Cases, 230 U. S. 352, 454.
Southwestern Bell Telephone Co. v. Public Service Commission, 262 U. S. 274, 288.
Bluefield Co. v. Public Service Commission, 262 U. S. 679, 692-695.
Brush Electric Co. vs. Galveston, 262 U. S. 443, 445.
Georgia Railway Co. v. R. R. Commission, 262 U. S. 625, 633.

In the Court below various expressions in the opinions in these cases were seized upon and claimed to sustain the Company's position. In no one of the cases was there any discussion of the point. We submit that it cannot now be asserted that so important a question of law has been foreclosed by this Court without discussion. On the contrary, we submit that the *Knoxville Case* is authority for our position. There this Court speaks of the duty of a public utility company to make an annual depreciation charge so that it shall keep "the *investment* unimpaired." Furthermore the question there at issue was whether in fixing the value of a plant the Company was entitled to add to the rate base certain amounts for

so-called complete and incomplete depreciation which had not in fact been taken by it in the past. This claim was rejected and it was in this connection that the following language relied on by our opponents was used:

> "Before coming to the question of profit at all the company is entitled to earn a sufficient sum annually to provide not only for current retirements, but for making good the depreciation and replacing the parts of the property when they come to the end of their life. The Company is not bound to see its property depreciate without making provision out of its earnings for its replacement. It is entitled to see that from earnings the value of the property invested is kept unimpaired, so that at the end of any given term of years the original investment remains as it was at the beginning. It is not only the right of the Company to make such provision but its duty to its bond and its stockholders and in the case of public service corporations at least, its plain duty to the public."

After making the statement just quoted the Court went on to say that if this duty had been neglected in the past, the company would not be allowed to make up this deficiency in the future. The Court said:

> "If, however, the Company failed to perform this plain duty and to exact sufficient returns to keep the investment unimpaired, whether this is the result of unwarranted dividends upon over issue of securities or of omission to exact proper prices for the output, the fault is its own."

Clearly what was here being dealt with was the subject of depreciation in general as affecting the fair value of the company's property which should be included in the rate base, and not the question here at issue as to how or on what basis an annual depreciation charge should be calculated; and *a fortiori*, this Court did not say that in

forecasting the amount of an annual depreciation charge the company must be allowed to charge off retirements at valuation figures rather than at cost. Our opponents, however, seize upon the sentence,—"It is entitled to see that from earnings the *value* of the *property invested* is kept unimpaired so that at the end of any given term of years the original investment remains as it was in the beginning"—and say that by "investment," as used in this sentence, is meant *property invested* and not *money* originally invested *in* property. This construction does violence to the natural meaning of the words used. The Court speaks of *original investment*, which could by no possibility be held to intend original investment *as modified by a subsequent valuation proceeding.* Furthermore, in the second passage, above quoted from the opinion, the word "investment" is obviously used in the sense of financial investment, i. e., *cost.*

The following passage was also cited for the Company from the *Minnesota Rate Cases, supra:*

> "The property is held in private ownership and it is that property and not the original cost of it of which the owner may not be deprived without due process of law."

In that case the question before the Court was as to the method of ascertaining the present value of a utility's property, i. e., the rate base on which to apply a fair rate of return. And it was in that connection that the quoted language was used. The question here under consideration was not discussed or decided. What the Court was discussing was the question as to the method of arriving at fair value and not the question, here involved, as to how the integrity of that fair value could be maintained through the operation of an annual depreciation allowance.

In dealing with the effect of the four remaining cases cited by our opponents, it must be borne in mind, as heretofore stated, that annual depreciation allowances, whatever may be their ultimate purpose or intent, are arrived at by varying methods and expressed in varying ways. The United Railways Company, like many other companies, has, as already stated, always heretofore expressed its allowances as a percentage of its gross earnings. Sometimes courts and commissions, instead of listing it under operating expenses, include it in the rate of return allowed on the fair value of the property, and express it as a percentage without distinguishing between the amount for return and the amount for depreciation. This latter method was adopted in the *Southwestern Bell Telephone Case, supra,* and the *Bluefield Case, supra.* In the *Brush Electric Case, supra,* and the *Georgia Railway Case, supra,* the allowance was expressed as a separate percentage of the value of the property of the utility in question. From these facts our opponents argue that since the percentage was calculated upon the value of the property instead of upon the cost thereof these cases sustain their position that retirements must be charged at valuation figures and not at costs. As a matter of logic the premise does not support the deduction, for the reason that it does not appear in any one of these cases that the percentage figure was designed to, or would in effect, result in permitting the Company to make future retirements at valuation figures rather than at costs. Furthermore, in no one of these cases was the point here at issue directly raised or considered.

The controversy which was before this Court in *Georgia Railway Company v. R. R. Commission, supra,* wherein the action of the District Court in refusing an

interlocutory injunction was affirmed, thereafter was referred by the District Court to a special master. He held that this Court had not decided the question as to the basis for calculating annual depreciation and concluded that the basis should be cost and not value. *Georgia Railway and Power Co. v. R. R. Commission of Georgia*, P. U. R. 1925 A, 546. He said at page 593:

"Only two figures are submitted as proper reserve for replacement: $113,563 by Professor Riggs and $150,000 by Mr. Luick. The Commission, as its report shows, took 2 per cent. on the 'undepreciated fair value' of the physical properties as a proper allowance for this item, and *fixed thatvalue at historical cost* (Italics ours). Mr. Luick estimated 2 per cent. of the depreciable physical properties, excluding land, as the proper basis on which to arrive at reserve for replacement. Neither the Special Tribunal nor the Supreme Court made a definite ruling on this question, but neither Court disturbed the amount of reserve as found by the Commission. The fixing of this figure does not, it seems to the Master, involve valuation, but an estimated allowance for the purpose of preserving the investment. In valuing the property, present value should be found, but the reserve should be applied to the investment, rather than the present value figure, since the reserve ought to be, and is, on principle, created to keep the investment intact * * *.

'The Supreme Court in Knoxville v. Knoxville Water Co., 212 U. S. 1, 13, in discussing this question, says:

'The Company is not bound to see its property gradually waste without making provision out of earnings for its replacement. It is entitled to see that from earnings the value of the property invested is kept unimpaired, so that at the end of any given term of years, the original investment remains as it was at the beginning * * *.

"* * * It has been well said that 'The value of the investment can be maintained provided there is restored to the Company each year such sums of money that, when each item of the plant can be no longer used, there will be in the possession of the company —money and useful plant or useful plant alone, equal in value to its original cost.' (Hayes on 'Public Utilities, Their Fair Present Value and Return,' page 33.)

Lyndon in his book on 'Rate Making for Public Utilities,' page 17 says:

'Depreciation reserve is a fund, the sole purpose and use of which is to preserve the integrity of the original investment required to produce the operating plant.'

Hayes, again, in his 'Public Utilities, Their Fair Present Value and Return,' on page 162, in discussing this question, says:

'It is usual to set aside each year a portion of their cost, so that, when an item has reached the end of its life and must be removed, there has been reserved an amount equal to its original cost.'

* * * * *

To allow a reserve which, during the estimated life of the plant, would amount to more than the original investment, would be to give the utility, out of rates collected from the public, not only a reserve sufficient to keep its investment 'unimpaired, so that at the end—the original investment remains as it was at the beginning'; but additional capital also. The utility should be allowed reserve for replacement sufficient to keep the investment unimpaired, and, in addition, a fair return upon the present value of the property, but the public should not be required to build up, in the form of maintenance reserve, additional capital for the utility."

Three cases were cited in the Court below as sustaining the contention of the Company, to wit:

United Fuel Gas v. R. R. Commission, 13 Fed. (2d) 510, 523 (Affirmed in 278 U. S. 300).
State, ex rel Hopkins, v. Southwestern Bell Telephone Co., 115 Kan. 236.
Michigan Pub. Utilities Commission v. Michigan S. Telephone Co., 228 Mich. 658.

In the first of these cases Judge Hickenlooper held that annual depreciation must be figured upon value rather than cost. This Court affirmed the lower court, but did not specifically pass on the question here at issue.

It must be admitted that the second case above cited is authority against our contention.

In the third case one of the questions involved was whether an accumulated depreciation fund amounting to $9,500,000 should be deducted from the rate base. The court disapproved the action of the commission in deducting it and in discussing this question held, at page 666, that "if the rate base is present fair value then the depreciation base as to depreciable property is the same thing." The *annual charge* for depreciatian was later considered by the court. The commission had fixed the rate at 4 per cent. to be computed on the total fair value less land and right of way (page 672). Against complaint by the company as to the amount this allowance would produce the court said "but this is a question of fact depending largely upon character, nature and age of the property in question and illuminated somewhat by the experience of the Company respecting the subject and it must not be overlooked that, as the costs show, many minor replacements and repairs and maintenance are made and charged to operating expense. In practice, this contributes considerably toward keeping the property intact. The Commission in its opinion (which

see) reviews the question at length and states fully the experience of the Company respecting the rate of depreciation and the accumulation of the fund. The rate fixed is comparatively low but, in the light of the facts in this case, we must decline to hold it confiscatory."

We submit that this question has not only not been decided adversely to our contention by this Court, but that such expressions as it has used on the subject support the view here urged.

(4) The *amount* which it is necessary to charge annually on account of depreciation is a question of fact. It is not a matter of mathematical formulas but rather a matter of judgment. In *Georgia Railway & Power Co. v. R. R. Commission*, 262 U. S. 625, the company objected to the amount of the depreciation charge allowed it by the Special Master and the District Court but this court held, page 633, "this question is one of fact, and we are not convinced that it was wrongly decided below."

No complaint is made in this case that the allowance to this Company for maintenance has been or is insufficient. The Court of Appeals did not find as a fact that the sum of $883,544 per annum estimated as the allowance which would be produced by 5 per cent. of the gross revenues of the Company was insufficient. The Commission found as follows (R. 40):

> "For 1927 the United Railways was allowed approximately 16 per cent. (of the gross) for maintenance and depreciation of which approximately 11 per cent. was for maintenance and 5 per cent. for depreciation. These two accounts yielded in 1927 a total of $2,589,736. It is generally recognized that the property of the Railways Company is well maintained."

III.

The Real Rate of Return Received by the Company is Greater than 6.26 Per Cent., But Even if this is Not So, the Company Has Not Met the Burden of Showing that Such Rate is Confiscatory, When the Question is Considered with Relation to All Relevant Facts.

The Company argued below that the rates of fare fixed by the Commission constituted a limitation of its return to 6.26 per cent. But there is nothing of record to show that, if under the present fares the Company can earn more, the Commission would reduce the rates. The Court of Appeals said (R. 1626):

> "In the argument of the case it was said that the Commission had limited the Company to a return of 6.26 per cent. on the value of its property, but the order did not so state. What it did do, was to fix a schedule of rates, which after deducting the allowances approved by the Commission for maintenance, replacement, operation, financing and other expenses, would yield that return, but if more efficient or economical management resulted in a larger net return there was nothing in the order to prevent the Company from retaining the benefit of that saving, even though it increased its net earnings to more than 6.26 per cent. of the value of its property."

There was ample evidence to sustain the finding of the Commission that a rate of return of 6.26 per cent. is reasonable. The Commission had before it and there is in the Record a history of the Company from the date of its organization in 1899; there is evidence of the fares charged and the returns received by other comparable street railway companies, as well as data indicating price trends, cost of financing and prevailing interest rates. The Company offered experts in support of its position who were cross-examined on behalf of the Commission.

The dissenting opinions in the Court of Appeals (particularly the opinion of Judge Parke, R. 1656-1659) show that the difference between the majority and the minority concerned the weight of this testimony. Judge Parke, dissenting, said at page 1658:

> "The position of the utility is made graver, and the public will not ultimately be benefited by the ruling in the pending case since, in the opinion of the writer of this dissent, the *weight of the evidence*, clearly and satisfactorily establishes that the Commission's limitation of the fair rate of return to 6.26 per centum of the value of its property is confiscatory, and, so unlawful" (Italics supplied).

And again (R. 1659):

> "The clear and convincing testimony in this case is that a basic rate of 6.26 per centum is not a fair return upon the property used, nor sufficient to enable the utility to maintain its credit or to secure its necessary capital at a reasonable cost. This evidence cannot be denied its legal effect by comparing the fares and rates of return allowed to street railway utilities of other municipalities of similar size, where the local conditions and hazards are different and a park tax equivalent to one-half a cent for every fare is not added. Such evidence is entitled to some weight in considering the lawfulness of the rate of return in question, but it is obvious that its value is slight when so much depends upon the circumstances of every case and the nature and method of determining the rate base upon which the return is allowed."

The majority of the Court differed *on the facts*, from the minority as appears by the following (R. 1640-1641).

> "It is argued that an 8 per cent. return is necessary to enable the Company to borrow money at reasonable rates, and that the fact that it is limited to a rate schedule which will yield a return of only 6.26

per cent. puts it at a disadvantage as a borrower and weakens its credit. But the evidence fails to support that contention. It is true that there is in the record a moss of subjective and highly conjectural testimony pro and con relating to it, much of which tends to support the Company's contention, but, whilst its usefulness may be conceded, the speculative opinions of experts who are themselves interested in increasing the rate of return on similar utilities cannot be substituted for the judgment of the Commission, and accepted as a conclusive determination of the question, at least where the judgment of the Commission is based upon substantive evidence."

We now proceed to a discussion of the evidence. On this subject, as on the kindred subject of valuation, this Court has laid down no formula. However, an indication of the factors to be considered was given in *Bluefield Water Works and Improvement Company v. Public Service Commission*, 262 U. S. 679 (1923), where it was said (692-695):

"What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility, and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its pub-

lic duties. A rate of return may be reasonable at one time, and become too high or too low by changes affecting opportunities for investment, the money market, and business conditions generally.

* * * * *

Investors take into account the result of past operations, especially in recent years, when determining the terms upon which they will invest in such an undertaking. Low, uncertain, or irregular income makes for low prices for the securities of the utility and higher rates of interest to be demanded by investors. The fact that the company may not insist as a matter of constitutional right that past losses be made up by rates to be applied in the present and future tends to weaken credit, and the fact that the utility is protected against being compelled to serve for confiscatory rates tends to support it."

We will first consider the expert testimony.

The Expert Testimony.

Before the Commission the Company introduced the testimony of Mr. Allen G. Hoyt, Vice-President of the National City Company (R. 531-544), and Mr. James C. Fenhagen, of Robert Garrett & Sons, bankers (R. 1142-1161), each of whom in answer to hypothetical questions gave it as his opinion that the Company should be permitted to earn at least 8 per cent. on the value of its property. Mr. J. J. Nelligan, President of the Safe Deposit and Trust Company of Baltimore, also briefly testified for the Company as to its credit situation (R. 544-547). Mr. Nash, of Stone and Webster (R. 836-856), and Mr. Downs, of Day and Zimmerman (R. 857-873), who were called by the Company to testify concerning allowances for depreciation, were cross-examined about the rate of return. The testimony of Mr. Hoyt given in a previous case before the Commission involving the rates of the Consolidated Gas Electric Light and Power

Company of Baltimore was put in evidence in this case (R. 1253-1305). And the testimony of the same witness given by him in the valuation case (R. 1306-1334) was offered in the present case, as was the testimony of Fred S. Burroughs, of Harris, Forbes and Company (R. 1334-1347), given in the valuation case.

The Commission offered no independent *opinion* evidence of its own directly contradicting the conclusions of these witnesses; but they were all subjected to cross-examination and, as already stated, there were other facts in evidence relevant to the question.

Under the authorities the Commission was not bound to take the opinions of these experts as facts.

In *Greencastle Water Works v. Public Service Commission of Indiana, et al.*, 31 Fed. (2d) 600, the statutory court for the Southern District of Indiana said at page 604:

> "Neither the Commission, nor this Court, is bound by the value of the property, as fixed by an engineer. The weight to be given to such testimony is to be determined in the light of the facts of the case in hand. Such evidence, however, must be considered along with all other competent evidence, in determining the fair value of the property. It is in the nature of expert testimony, and the weight to which it is entitled is governed by the rules pertaining to such testimony. Ohio Utilities Co. v. Public Utility Commission, 267 U. S. 359."

In *Idaho Power Company v. Thompson*, 19 Fed. (2d) 547, the statutory court for the Southern District of Idaho said at page 552:

> "And, it is to be added, where a factor in the problem involves prophesy, or rests upon mere opin-

ion evidence, the Commission was not, nor are we, bound to accept absolutely and without qualification one or the other of two conflicting views, or the opinion of a single expert where but one testifies. The Conqueror, 166 U. S. 110, S. Ct. 510, 41 L. Ed. 937. And see Willcox v. Consolidated Gas Co., 212 U. S. 19, 50, 51, 29 S. Ct. 192, 53 L. Ed. 382, 48 L. R. A. (N. S.) 1134, 15 Anno. Cas. 1034."

In *Brooklyn Union Gas Company v. Prendergast*, 7 Fed. (2d) 628, the Court said at page 668:

"Plaintiff seems to contend that, because no evidence was offered by any experts called by the defendants as to values, this court is bound to accept the testimony of the plaintiff's expert witnesses and allow the amounts testified by such experts, and cites Ohio Utilities Co. v. Public Utilities Commission of Ohio, decided by the United States Supreme Court, March 2, 1925, 267 U. S. 359. * * * But that case does not seem to be in point, because in that case there was a valuation by the engineers of the Commission, which was acquiesced in by the Company, and no substantial evidence was found in the record to the contrary.

In the case at bar, while the defendants called no expert witnesses, they did cross-examine the plaintiff's experts, and the court has a right to consider the testimony given in the light of the cross-examination, and accord to it such weight as it deems proper. Head v. Hargrave, 105 U. S. 45; The Conqueror, 166 U. S. 110."

In *Chesapeake and Potomac Telephone Company v. Whitman*, 3 Fed. (2d) 938, the statutory court for the District of Maryland had before it expert testimony offered on behalf of the Company supporting a return of 8 per cent. The Court, speaking through Circuit Judge Rose, declined to accept their opinions and allowed a return of 6 per cent.

Now the expert testimony of the Company was presented from three distinct points of view and from each point of view a claim was made that a return of less than 8 per cent. would be confiscatory.

(1) The first hypothesis put to witnesses was this:

> "Q. If investors were going to buy or build a property like this Company, what amount would they feel, in your opinion, that the property should earn in order to induce them to invest their money in the purchase or construction of such a property?
>
> A. I should think that they would have to have an expectation of at least 8 per cent. to induce them to make the purchase or contract (construct) the property" (R. 535, 1255, 1312).

In this question and answer it is obvious that what was being discussed was an investment to reproduce this *identical plant* of this Company with all its defects in planning, obsolescence and other disadvantages. This was not evidence that 8 per cent. return would be essential to bring forth an investment in a modern up-to-date plant which could render equivalent service.

The evidence of Mr. Hoyt was the most detailed and it will be examined as typical. Our contention is that his conclusion is based on assumptions which are contrary to fact and which, even if founded on fact, do not follow from his premises.

He assumes that as of the date of his testimony bankers or investors could not be induced to supply the necessary money to construct a plant like that of the Company unless they were permitted to receive a return thereon of at least 8 per cent. If this assumption is true, he says, then it follows that, unless the existing company is

permitted to earn a return of 8 per cent. on the value of its property, there would be a discrimination against the capital already invested therein. In other words, if the community could not provide a substitute service without allowing a return of 8 per cent. then less than that return would be unfair to the existing Company, on the value of its existing plant. But this conclusion rests upon the assumption that the new investors would in fact build a new plant like the existing plant at a cost equal to the valuation of the existing plant for the purpose of providing the identical service. We submit that such an assumption is contrary to the fact. The real question now being discussed is whether the rates of fare fixed by the Commission and resulting, as it found, in a rate of return of 6.26 per cent. are confiscatory or not; and if a new substitute company furnishing equivalent transportation service could at the same rate of fare earn sufficient to obtain a return equal to that claimed to be reasonable by Mr. Hoyt, there is no apparent reason why the existing Company should be allowed a higher rate of fare and a higher return. The present Company was formed in 1899 and then and for many years thereafter enjoyed a complete monopoly. For some years its business showed a yearly increase; since 1920 it has shown a yearly decline. Though protected by law from independent motor bus competition, it is subject to the competition of the private automobile. In consequence the commercial possibilities (i. e., what the Compan *can* earn) are less than in the past and are diminishing. Thus, the chief element that gives value to such a property is less potent. Certainly the projectors of any new street railway plant would consider these facts. If they built at all, they would not expend more money than the traffic justified. That is to say, a new plant would cost less than the value found for the old and the same

or much better service could be supplied at the same rate of fare with a consequent higher rate of return on the investment. In addition, it cannot be assumed that there has been no progress in the street railway art. A new plant therefore would be better planned with reference to present conditions, more economically constructed and would have more modern equapment. In other words, an equal or better substitute service could be supplied at the same rates of fare. If this is true and a new plant could earn a greater return at the same rates of fare, than the existing plant, it is difficult to see on what theory, either economic or legal, this Company can support its claim to charge a higher rate.

Now, apart from this, if in fact new street railway plants such as the plant of this Company were being built or bought, there would be some data on which an opinion could be based as to the rate of return required by investors, but no such companies are now being built or bought (R. 1146-1147).

(2) Mr. Hoyt further gave it as his opinion (R. 1256) that the lowest rate of return such a Company as this should be permitted to earn on the value of its property in order to make that return equal to that generally being made at the same time and in the same general part of the country on investments in other business enterprises attended by corresponding risks and uncertainties would have to be 8 per cent. This testimony was given in the Gas Company case on *April 19, 1926*. The witness gave no specific instances of any companies, whether gas companies, electric light companies, or street railway companies, that were in fact earning such a rate of return on the date in question. Mr. Nash, a Company witness, testifying in *1927*, stated that comparatively few

street railway companies were earning 6 per cent. Mr. Downs, of Day and Zimmerman, testified that his organization managed eight or ten electric railway companies in cities such as York, Scranton and Altoona, Pennsylvania, and Zanesville and Lima, Ohio, and that the highest rate of return on any of them was about three per cent. (R. 864).

People's Counsel Exhibit No. 25 (R. 1517) shows that of eleven large cities in the United States comparable to Baltimore, charging cash fares ranging from five to ten cents and token fares ranging from six and one-half to eight and one-third cents, all were earning less than 6 per cent., except Chicago, which was earning 6.27 per cent. in 1927. The Boston company's rate of return was 4.64 per cent. on a rate base representing the total investment in physical property with a flat ten cent fare, four tokens for 25 cents. Mr. Wolf, chief engineer for the Commission (R. 893), testified that the base column in this exhibit was made up to show the minimum rate base which according to the available information the Commission having jurisdiction would have placed on the property.

In the court below the Company challenged the relevancy of this comparison mainly on the ground that for it to have any weight the specific facts in regard to each individual company would have to be known and this would involve making the same inquiry concerning each city which is now being made concerning Baltimore. It is not perceived why the same criticism, if valid in this instance, would not be equally valid in regard to any other utility companies whatever. We submit that other street railway companies not only are business undertakings which are attended by risks corresponding to the

risks this Company is subjected to, but are in fact *the* business undertakings furnishing the truest basis for comparison. According to the rule of the *Bluefield Case, supra,* what a utility is entitled to by way of return is a sum equal to that generally being *made* at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties. Hence the experience of a gas company or electric light company may be relevant, unless indeed such companies have become highly profitable enterprises. Other street railway companies could only be *excluded* from consideration on the assumption that their properties were in 1927 suffering confiscation through unconstitutional action of commissions. The evidence in the record justifies this statement in the opinion of the Commission (R. 37-38):

> "Witnesses for the Company (Messrs. Hoyt, Burroughs and Fenhagen) testified that an 8 per cent. return would be necessary to get capital to invest in street railway properties, but none of them showed that any street railway company did or could earn that rate. As a matter of fact, none of them do. Therefore, according to the testimony it is not possible to get capital, not only for the United Railways but for any street railway in the country. Yet we do know that capital *is* forthcoming at fair rates of interest for well managed street railway companies which are giving adequate service to the public at reasonable rates, even if those rates do not yield 8 per cent. It may be true, however, that capital could not be obtained for the establishment of a complete new railway system anywhere in this country."

In *Chesapeake and Potomac Telephone Company v. Whitman, supra,* Circuit Judge Rose said at page 954:

> "According to the table submitted on its behalf, its net earnings have almost always fallen somewhat

short of 6 per cent. and yet it has not only lived but it has been able to raise many millions for the expansion of its facilities and the promotion of its business."

The situation of the steam railroads of the country is in many respects analogous to that of a street railway in a City such as Baltimore. Both are subject to competition from transportation agencies other than other railroad companies. The steam railroads are in competition with water lines and with motors; the street railways with the private automobile. See dissenting opinion of Justice BRANDIES in *St. Louis and O'Fallon R. Co. v. U. S.*, 73 L. Ed. 457-471-474.

As shown at page 471, note 29, of this same opinion, the rate of return calculated an Ex Parte 74 (Re Increased Rates 1920, 58 Inter. Com. Com., Report 220) value of the railroads as a whole brought down to date, was:

	1921	1922	1923	1924	1925	1926	1927	1928
Per cent.:	3.2	4.0	5.1	4.9	5.5	5.8	5.1	5.5

Notwithstanding this competition and this low rate of return the Interstate Commerce Commission found, as stated by Justice BRANDEIS in the same case, at page 469:

"During the period 1920-1926, inclusive, the investment in railroad property increased by 4 billions of dollars. A substantial part of this money was derived from income but much of it was obtained by the sale of new securities. The market for railroad securities since the passage of the Transportation Act, 1920, has steadily improved and the general trend of interest rates has been downward. The credit of the railroads in general is now excellent."

(3) Mr. Hoyt was further interrogated as to the rate of return required to secure proper credit for financing.

Apparently this evidence was designed to comply with what may be called the second rule laid down in the *Bluefield Case, supra,* as follows:

> "The return should be reasonably sufficient to insure confidence in the financial soundness of the utility, and should be adequate under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties."

The actual question put to Mr. Hoyt embraced somewhat different elements. It was as follows (R. 1255):

"Q. Taking into consideration other classes of investment, with the comparative risks and return thereon, the rate of return generally required to secure proper credit for borrowing money and financing its operations, what should such a company as this Company be permitted to earn in order that it might compete successfully with other business and be on a parity with them, in your opinion?

A. I think the return should be 8 per cent. in order to permit it to compete with other lines of industry for capital."

Now, obviously, if this Company did in the past create a situation which now adversely affects its credit, it cannot demand a rate of return high enough to pay investors the abnormal rates for money which they would necessarily exact. That is to say, whereas the Company is entitled to collect, if it can, its necessary costs (including the cost of money), it cannot be heard to say that its property is confiscated unless it be permitted to earn costs rendered abnormally high by its own financial structure. In 1899 its ratio of debt to total capitalization was approximately 68 per cent. Some twenty-eight years

later the Commission fixed the value of the total property of the Company at $75,000,000. As of the same date the Company had outstanding (including its notes) $67,176,200 in securities representing funded debt and $20,461,200 of stock. Therefore, these securities at par exceeded the value of the property as fixed by the Commission by $12,637,400, and the ratio of funded debt to total capitalization was approximately 76 per cent. and the ratio of funded debt to the value of the property, as found by the Commission, was approximately 90 per cent. (R. 27).

Commenting on this the Court said (R. 1641):

> "And it is quite as reasonable to assume that the fact that the ratio of the Company's funded debt to the value of its property is, as the Commission found, approximately 90 per cent. affects its credit, as the fact that it can only earn 6.26 on the value of its property."

That the Company has an unbalanced financial structure was admitted by Mr. Hoyt (R. 534) and is self-evident. To be properly financed a street railway company should have no more than 60 per cent. in bonds and 40 per cent. in stocks, either preferred or common (Fenhagen, R. 1145). It is not surprising, therefore, that the Company had to pay for borrowed money from 1920 to 1927 prices shown on its Exhibit No. 31 (R. 1462). As shown by this table, cost of long term bonds in 1922 was 6.75 per cent. and on other long term bonds in 1924, 6.93 per cent.; and on short term notes in 1927, 7.32 per cent. Over the same period of time the weighted and simple average yields at offering price of new public utility securities issued had steadily gone down from 7.55 per cent. in 1920 to 5.24 per cent. in 1927, and from 7.64 per cent. in 1920 to 5.61 per cent. in 1927, respectively. (See Ap-

pendix to Brief, page 154, where a table taken from the Journal of Land and Public Utility Economics, May 19, 1928, is set out.) And the average weighted interest rate of securities (not including stocks, R. 972), authorized by the Maryland Public Service Commission to be issued decreased from 6.33 per cent. in 1921 to 5.12 per cent in 1926 (People's Counsel Exhibit No. 51, R. 1594). See People's Counsel Exhibit No. 6 (R. 1475) being a table of securities issued by the Company from 1911 to July, 1927. See also People's Counsel Exhibit No. 49 (R. 1592), showing average rate of interest on indebtedness of Company at September 30, 1927.

From 1920 to 1926, both inclusive, the return earned by this Company on its property at the valuation figure of $75,000,000 adjusted for the years in question was as follows (See Appendix to Brief, page 147):

For the calender year	1920	5.579%
	1921	4.987%
	1922	5.331%
	1923	5.469%
	1924	5.469%
	1925	5.621%
	1926	5.671%

This return compares very favorably with that shown by the street railway companies in eleven large cities of the United States (People's Counsel Exhibit No. 25, R. 1517), and is substantially higher than the return earned by the steam railroads of the country during the years 1921 to 1927 (See figures, supra, page 9). The situation of this Company, therefore, was that with a rate of return for the years 1920 to 1926, inclusive, substantially higher than that of the steam railroads of the country and comparing favorably with that earned by other street rail-

ways in 1927 and with interest rates as shown by the yields on new public utility security issues steadily falling during the period 1920 to 1927, and as likewise shown by the average interest rates of securities authorized to be issued by the Maryland Public Service Commission steadily falling, this Company paid more for borrowed money in 1927 than it did in 1922. It would appear from this that whatever *general* causes may have been affecting the cost of money to street railway companies in 1927, there was a *special* cause affecting the credit of this Company, i. e. the nature of its financial structure.

Mr. Hoyt said that the endeavor of the Company should be, whenever its credit permitted it to do so, to finance by issuing stock in order to improve the ratio of equity securities to those bearing fixed charges (R. 534), and he suggested that if the Company were compelled to pass its dividend the likelihood of its doing preferred stock financing would be rendered extremely remote. *He did not state that if the Company were allowed to earn and pay its dividend any preferred stock financing would in fact have been feasible.* In order to alter the capitalization of the Company so that only 60 per cent. would be represented by bonds and 40 per cent. by stock would require a reduction in bonds from $67,000,000 to $52,000,000, and an increase in stock from $20,000,000 to $35,000,000, i. e. $15,000,000 of debt would have to be liquidated by the sale of stock.

Mr. Hoyt further expressed his opinion (R. 1290-1291) that the average utility company of good credit earned its fixed charges from two and one-half to three times. Applying this rule to the case at bar we find that this Company's passenger revenue would have to be $23,219,000 to earn which a base fare of 11.52 cents

would have to be charged. According to the Company's estimate (Exhibit 24, R. 1428) the 10 cents flat fare asked by it would have yielded in 1928 passenger revenue of $20,156,000. (See Appendix to this Brief, page 145).

(4) The decisions of this Court emphasize that what is a fair rate of return must be determined with relation to all relevant circumstances existing as of the date of the inquiry:

> "A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally."
>
> *Bluefield W. W. etc. v. Public Service Commission*, 262 U. S. 679, 693.

This Court will take judicial notice that these factors may change either up or down in a very brief time.

In *Lincoln Gas Company v. Lincoln*, 250 U. S. 256, it was said at page 268:

> "It is a matter of common knowledge that, owing principally to the world war, the costs of labor and supplies of every kind have greatly advanced since the ordinance adopted, and largely since this cause was last heard in the court below, and it is equally well known that annual returns upon capital and enterprise the world over have materially increased, so that what would have been a proper rate of return for capital invested in gas plants and similar public utilities *a few years ago* furnishes no safe criterion for the present or for the future." (Italics supplied.)

This was said in 1919. The evidence already cited shows that financing costs of public utilities in general

reached their peak about 1920, and steadily declined thereafter to and through the year 1927, the date of the hearing. It would seem that this trend would have to be taken into account by expert witnesses, such as those with whose testimony we have been dealing and that would necessarily find some reflection in their estimates of a fair rate of return. Mr. Hoyt and Mr. Burroughs testifying May 27, 1925, in the Valuation Case as to conditions *January 1, 1924,* said 8 per cent. was fair; Mr. Hoyt testifying *April 19, 1926,* in the Gas Company Rate Case said 8 per cent. was fair, and finally testifying in *September, 1927,* in the present case, again said that 8 per cent. was fair. In other words, over a period of three years and nine months (January 1, 1924, to September, 1927), no effect whatever was given to material changes which did in fact take place in conditions which this Court has held must be considered in arriving at the rate of return.

During the period in question the prices of capital were as follows (See Appendix to this Brief, Schedule F, page 153):

Year	Municipal Bonds	R. R. Bonds	P. U. Bonds	Indus. Bonds	Indus. Pfds.	Foreign Govt's	Price of Capital
1924 1st quarter	4.39%	5.21%	6.31%	6.55%	7.32%	6.39%	6.08%
1924 2nd "	4.29	5.47	6.20	6.68	7.14	6.40	5.98
1924 3rd "	4.24	5.20	6.11	6.30	6.92	6.59	5.86
1924 4th "	4.17	5.00	5.91	6.36	6.99	7.03	5.78
1925 1st "	4.00	5.17	5.77	6.24	7.26	7.18	5.77
1925 2nd "	4.00	5.45	5.70	6.33	7.19	6.81	5.82
1925 3rd "	4.17	5.37	5.38	6.06	6.63	6.68	5.79
1925 4th "	4.30	5.09	5.82	6.11	7.06	7.30	5.82
1926 1st "	4.25	5.13	5.80	5.88	6.76	7.26	5.77
1926 2nd "	4.22	4.83	5.46	6.15	7.25	6.85	5.70
1926 3rd "	4.21	5.11	5.71	5.93	6.96	6.78	5.76
1926 4th "	4.36	5.09	5.51	5.68	6.59	7.04	5.74
1927 1st "	4.25	4.91	5.41	5.70	6.52	6.47	5.60
1927 2nd "	4.06	4.86	5.48	5.75	6.53	6.47	5.51
1927 3rd "	4.11	5.04	5.30	5.93	6.46	6.15	5.50

From 1924 to 1927 the United States Bureau of Labor Statistics Index for all Commodities Wholesale, the

datum being taken as 100 in 1913, fell from 150 to 146 (People's Counsel Exhibit No. 23, R. 1510).

Summarizing, we submit that though the expert testimony was not directly contradicted by any expert witness of the Commission, nevertheless the Commission was justified, as was the Court of Appeals, in giving it little, if any, weight. Its inherent weight was negligible.

The Rate of Return on the Value of the Property of Steam Railroads Fixed by Congress by the Transportation Act of 1920 as Reasonable May Be Lower than the Rate Fixed by the Commission in This Case.

If this Company had been an interstate steam railroad, it would have been required by the terms of the Transportation Act of 1920 to place one-half of its earnings in excess of 6 per cent. in a reserve fund and pay the remaining one-half to the Interstate Commerce Commission for the purpose of establishing and maintaining a general railroad contingent fund. By these provisions Congress has thus affirmed that for steam railroads engaged in interstate commerce a return of less than that allowed in this case is a fair return. Of course, if a railroad can earn say 8 per cent., one-half of the excess over 6 per cent. would be held by it in the reserve fund and used by it in accordance with the Act. In other words, whereas the operation of the Act does not necessarily prevent a railroad from earning more than 6 per cent., it may so operate in certain instances as that the net return to the Company will be only a very small fraction above 6 per cent. (See Section 15a, pars. 1, 2, 3, 4, 5, 6, 7 and 8, of the Transportation Act of 1920, 41 Stat. at L. 488). Furthermore, par. 3 provides that a return of 5½ per cent. with the addition there to of ½ per cent. in the

discretion of the Interstate Commerce Commission shall be taken as a fair return during the two years beginning March 1, 1920.

The constitutional validity of these sections has never come before this Court in a case where their application would limit the carier to a return of a small fraction over 6 per cent. In *Dayton-Goose Creek R. Co. v. U. S.*, 263 U. S. 456, the return which the carirer received after compliance with the law was about 8 per cent. on the reported value, so that the question here involved was not determined. Nevertheless the Court expressed its opinion on the subject in what at least was a strong dictum as follows, page 486:

> "The act fixes the fair return for the years here involved, 1920 and 1921, at 5½ per cent., and the Commission exercises its discretion to add one-half a per cent. The case of *Bluefield Water Works & Improv. Co. v. Public Serv. Commission*, 262 U. S. 679, is cited to show that a return of 6 per cent. on the property of a public utility is confiscatory. But 6 per cent. was not found confiscatory in *Wilcox v. Consolidated Gas Co.*, 212 U. S. 19, 48, 50; in *Cedar Rapids Gas Light Co. v. Cedar Rapids*, 223 U. S. 655, 670; or in *Des Moines Gas Co. v. Des Moines*, 238 U. S. 153. Thus the question of the minimum of a fair percentage of value is shown to vary with the circumstances. Here we are relieved from considering the line between a fair return and confiscation because, under the provisions of the act and the reports made by the appellant, the return which it will receive, after paying one-half the excess to the Commission, will be about 8 per cent. on the reported value. This can hardly be called confiscatory."

In *St. Louis & O'Fallon R. Co. v. U. S.*, 73 L. ed. 457, this Court did not consider what rate of return the carrier was actually earning on the basis of the value fixed.

The fundamental question involved was not the question of confiscation but rather whether the Commission had acted as directed by Congress. However, it appears from the dissenting opinion that on the carrier's own estimate of value it was earning about 8 per cent.

But the *O'Fallon Case* does hold that the Transportation Act for the purposes in qustion directed that values should be fixed upon the consideration of present cost along with all other pertinent facts. In the case at bar, the Public Service Commission fixed the value of the Company's property upon the consideration of present cost and excluded all other considerations. If in the *O'Fallon Case* the Interstate Commerce Commission had followed the valuation rule which the Public Service Commission in this case did in fact follow, the question of constitutionality would necessarily have been involved if the rate of return had not exceeded, as here, 6.26 per cent. As we have said, this question was not decided in either the *O'Fallon* or the *Goose Creek* cases, but in the latter it was strongly intimated that a return of say 6.26 per cent. was not in itself confiscatory, but that the question of the minimum of a fair percentage of value varies with the circumstances. In any event Congress has as to the steam railroads given the strongest sort of legislative sanction to the proposition that a return of not less than 5½ per cent. nor more than 6 per cent. during the period of two years beginning March 1, 1920, and a possible return thereafter of only a small fraction above 6 per cent. is sufficiently above the limit of confiscation as to constitute a "fair return." It remains to consider what relation this legislative standard has to the situation of a local street railway.

The steam railroads are subject to competition among themselves. One purpose of the Transportation Act of

1920 was to do away with some of the economic effects of this. The street railway Company in this case suffers no such competition. The Maryland Commission under the law has power, which it has exercised, to protect this Company against "jitney" competition, so that no public automobile busses compete with the Company. It does, however, compete with the private automobile, which neither the Commission nor any other public agency in Baltimore has power to control in this respect. The steam railroads of the country, on the other hand, suffer from the competition not only of the private automobile but of automobile lines operating as common carriers. Likewise they must meet cmpetition from water borne traffic and this latter form of competition has been fostered by the Government. Despite these facts it is clear that Congress concluded that a minimum return of a fraction over 6 per cent. would not be confiscatory. It must be presumed that this was done with full knowledge that the credit of the railroads must have been affected by the fact that as a whole they had been earning substantially less. Furthermore the Act has a uniform application and therefore applies to any individual railroad no matter how seriously its financial structure might affect the cost to it of necessary money. Nor does the Act require the Interstate Commerce Commission, as a pre-requisite to a recapture order, to establish a general level of rates upon the aggregate value of carrier property either as a whole or in some prescribed rate or territorial group. Such a position was taken by the railroad in the *O'Fallon* case, but was overruled by this Court. The Court said (73 L. ed. at 460):

> "Also we think the District Court rightly rejected the claim that excess earnings were not recapturable unless and until the Commission had fixed a general level of rates intended to yield a fair return upon

the aggregate value of carrier property either as a whole or in some prescribed rate or territorial group."

In consequence it is possible for the Interstate Commerce Commission so to fix the rates of an individual carrier that they will yield to the carrier a return of only a small fraction about 6 per cent. Finally, Congress must be taken to have known that all railroads, and particularly the weak railroads, were under the necessity (just as this Company) of competing for capital with other industries yielding much higher returns. It can not be forgotten that capital, like other commodities, must be sold or utilized so as to realize its value and that neither the whole available supply of any commodity, capital included, can always command the highest price. In other words, there is a high priced market for capital which will absorb a certain proportion of the available supply, and the remainder must seek the lower priced market or remain unemployed.

The Authorities.

The most recent cases show a strong tendency to approve rates of return lower than the rates held reasonable during the period following the World War. Mr. Justice BRANDEIS, delivering the opinion of the Court in *Galveston Electric Co. v. Galveston*, 258 U. S. 388, decided in 1922, referring to an ordinance passed June 5, 1919, fixing the rate of fare for a street railway company, said at page 402: "But nearly three years have elapsed since the Board adopted the ordinance; and more than a year since entry of the decree below. We know judicially that the period has, in general, been one of continuous price recession, and that the current rates of return on capital are much lower than they then were."

In *Greencastle Water Works v. Public Service Commission of Indiana,* 31 Fed. (2d) 600, the statutory court for the Southern District of Indiana decided on March 18, 1929, that a return of 6½ per cent. was not confiscatory. The Commission had fixed the fair value of the company's property at $300,000. Stone and Webster, for the company, estimated a value of $594,200. The court fixed a value of not less than $350,000. It said, page 606:

> "Having determined that the fair value of the plaintiff's property, as found by the Commission, is inadequate, this court, upon all the evidence, finds the fair value of such property to be no less than $350,000, and that a return of 6½ per cent. on that amount, after providing for all proper operating expenses including amortization of the rate case expenses over a period of five years, taxes, and depreciation at the rate of 1 per cent. per annum on the book value of its depreciable property, will not be confiscatory."

In *Cambridge Electric Light Co. v. Atwill,* 25 Fed. (2d) 485, the statutory court for the district of Massachusetts on April 11, 1928, refused to hold that a return of less than 8 per cent. would *ipso facto* be confiscatory. The case was an application for an injunction *pendente lite,* to restrain the Public Utilities Department of Massachusetts from enforcing an order requiring the plaintiff to make material reductions in its rate for domestic and commercial lighting. The application was refused and the case referred to a special master to take the testimony. The Department had held that the earnings under the new rates would be more than sufficient to pay 6 per cent. on the valuation and stated that such a return is "'very attractive' in Massachusetts for securities of this sort." The Court said at page 487:

"As to the rate of return: on this point also the Department had before it, as we understand, substantially the same evidence as is before us, viz., that the rate of return should be 8%. This evidence was rejected, and the Department adopted, as stated in its decision, a rate of 6%. This also is primarily a question of fact depending upon a number of factors. What would be a fair return for a company in one locality at a certain period might be inadequate or excessive for other companies differently situated. The rate of interest has also to be taken into consideration. *Bluefield Co. v. Public Service Commission*, 262 U. S. 679. On the plaintiff's own figures it will get a return under the new rate of about 5 per cent. on its valuation. On the figures of the Department its return will be about 7 per cent. We are not at present satisfied that a return of less than 8 per cent. would *ipso facto* be confiscatory, or that the return which the plaintiff will actually obtain under the new rate will be of that character. These points should await final hearing and possibly the results of actual experience."

One of the circumstances to be taken into consideration is *locality*. Conditions in Virginia are similar to those in Maryland.

On January 20, 1927, the Supreme Court of Appeals of Virginia, in *C. & P. Tel. Co. v. Virginia*, 147 Va. 43, substituted a 6 per cent. rate of return for a 6½ per cent. rate of return fixed by the Virginia Commission. The Court said (pages 82-84):

"It is argued for the appellant Company that it is unquestionably entitled to 8 per cent. return upon the rate base. If so, its owners have an assurance which cannot be given to any investor in private enenterprises. We do not construe the decisions of the Supreme Court of the United States to afford any such guaranty. There have been many cases in which smaller returns have been held sufficient. * * * Re-

ferring to the provisions of the Federal Transportation Act as to railroad earnings, Mr. Chief Justice TAFT recently said: 'By investment in a business dedicated to the public service the owner must recognize that as compared with investments in private business, he cannot expect either high or speculative dividends, but that his obligation limits him to only fair or reasonable profit.' *Dayton-Goose Creek Railroad Co. v. U. S.*, 263 U. S. 456. * * * While much is said for the appellant of the appreciation of labor and material costs at this time, little has been said about the decreasing returns upon investments. Most of the cases in which a rate of return greater than 6 per cent. has been approved were decided since 1918 and while interest rates were high. In this case it is proved, and is a matter of common knowledge, that the rates for money when this case was decided were rapidly approaching normal rates. They are still decreasing, and corporations of sound financial credit can readily float their securities at greatly reduced rates. The high rate of return required a few years ago to attract capital to sound enterprises is no longer necessary. So that it seems to us perfectly certain that even if there were no other benefits a 6 per cent. return upon the fair vlaue of a property such as this cannot be held to be confiscatory. The risk is slight because of the fact that the revenues are quite fixed and certain, and the business is one which is not greatly affected by market fluctuations. We find in this record no reason for holding as to this Company that the rates prescribed will fail to yield a just and reasonable return, when all the relevant facts are accorded proper weight."

On February 27, 1925, Circuit Judge Rose delivering the opinion of the statutory court for the District of Maryland, composed of himself and District Judges Groner and Soper, in *Chesapeake & Potomac Telephone Co. v. Whitman*, 3 Fed. (2d) 938, held that a 6 per cent. return on the value of the property of the Telephone

Company operating in the City of Baltimore and the State of Maryland was sufficient. At pages 953-954 he said:

"The Company says it is entitled to a return which would yield it 8 per cent. on the fair present value of its propery used and useful in the service of the public. There is at least one recent opinion from a distinguished court which so holds. New York Telephone Co. v. Prendergast (supra). A history of the present controversy seems, however, to show that the Company makes that contention here principally as a second line of defense, behind which it may shelter itself in the event that the valuation it puts upon its proyperty is too largely reduced. It claims that its plant is worth upwards of $38,000,000, even after allowance has been made for depreciation; 8 per cent. on that sum would be $3,064,000. The rates which it would have put in force, had the Commission permitted it to do so, would, it calculates, yield it a net revenue not much over two-thirds of that sum, or less than 6 per cent. on what it claims to be a fair value of its property. It offered the testimony of several investment bankers of wide experience, high character, and great ability. They agreed that, in order to insure that a public utility of the character of the Company should be able on occasion to get the new capital necessary for a constantly expanding business, it must be able to show earnings of at least 8 per cent. on the money invested. Two of these witnesses based this conclusion on the view that, in order to secure additional investmen, the utility must be earning more than it spends or distributes; in other words, that its surplus and undivided profits must steadily increase. They thought that the minimum sum which should annually be added to these accounts was 2 per cent.

"They may be right in their judgment, as to the difficulty of getting people to put their money into a company which is not improving its financial position. We have no reason to suppose that they are not. It may be that the public is even more inter-

ested in good service than it is in what that service would cost within reasonable bounds. If, so, Legislatures and Commissions may wisely give great weight to the considerations so forcibly urged by these banking witnesses. *Nevertheless we take it to be clear that to deny to a utility the opportunity constantly to add to the value of its property out of the rates paid by the public is not confiscation.* If the present Company stood alone, either in the sense that it had, unaided, to look after its own financing, or that it did not form what is in reality an integral part of a nation-wide system we might well doubt whether a return of 6 per cent. would be sufficient to enable it to raise the money necessary to its growth, and therefore, it may be, to its life; but such is not the case. It is owned and altogether controlled by The Ameriman Telephone & Telegraph Company, hereinafter styled the National Company. In partial return for a substantial annual sum paid by it to the National Company, the latter has agreed to assist it in its financing. *According to the table submitted on its behalf, its net earnings have almost always fallen somewhat short of 6 per cent., and yet it has not only lived, but it has been able to raise many millions for the expansion of its facilities and the promotion of its business.* It is not for us to pass upon questions of policy. It may well be, as the Commission itself in 1916 thought, that the Company should be permitted to earn as much as 8 per cent., if it could. *All that we hold is that, if the Company be allowed as much as 6 per cent., its property has not been confiscated.* On the other hand, on this record, we are convinced that an enforced schedule of rates, which would make such minimum earning impossible, is in legal effect to take from the Company its property without just compensation therefor."

If the weight of this decision is affected by the fact that the local company had a contract with the national company whereby the national company, in consideration

of payments to it, rendered various services, including assistance in its financing, to the local company; if, in other words, the 6 per cent. return to the local company was subject to very little, if any, deductions for financing costs since these had already been paid (in what amount it is impossible from the opinion to say) under the contract referred to, there are counter-balancing facts. In the case at bar the return is higher. Further, the Court refused to adopt as applicable to Baltimore or Maryland the New York rule laid down in *New York Telephone Co. v. Prendergast,* 300 Fed. 822, approving an 8 per cent. return, and lastly, the case was decided in 1925, whereas the Commission's decision in the case at bar was some two years later when interest rates were lower.

In the Court below the Company relied strongly on a series of cases dealing (with one exception, a telephone company) with gas companies, located in or near New York City, wherein returns of 8 per cent. were allowed. The period of time embraced in these decisions was from 1924 to 1926.

See:

New York & Queens Gas Co. v. Prendergast, 1 Fed. (2d) 351 (June 16, 1924) (Appeal dismissed 268 U. S. 708).

Consolidated Gas Co. of N. Y. v. Prendergast, 6 Fed. (2d) 243 (April 22, 1925) (Affirmed in Ottinger v. Consolidated Gas Co., 272 U. S. 576, Nov. 29, 1926).

Kings County Lighting Co. v. Prendergast, 7 Fed. (2d) 192, (June 30, 1925) (Modified and affirmed in Ottinger v. Brooklyn Union, 272 U. S. 579, Nov. 29, 1926).

Brooklyn Union Gas Co. v. Prendergast, 7 Fed. (2d) 628, (June 24, 1925) (Modified and affirmed in Ottinger v. Brooklyn Union, 272 U. S. 579, November 29, 1926).

New York & Richmond Gas Co. v. Prendergast, 10 Fed. (2d) 167 (December 18, 1925).

New York Telephone Co. v. Prendergast, 11 Fed. (2d) 162 (March 10, 1926).

In most, if not all, of these cases the companies produced experts to testify according to the same formulas adopted by the Company's expert witnesses in this case. Indeed, one of the witnesses for the plaintiff in this case (Mr. Hoyt) also testified in *Consolidated Gas Co. v. Prendergast*, 6 Fed. (2d) 243, and there, as here, said that a return of 8 per cent. on the present cost of buying or building the property and *even more* would be required to interest capital. In the earliest of these cases, *New York & Queens Gas Co. v. Prendergast*, the Company's witnesses claimed a *10 per cent.* return.

In none of these cases did this Court rule that a return of less than 8 per cent. was *confiscatory*. In *Consolidated Gas Co. v. Prendergast*, 6 Fed. (2d) 243, the special master had found that as of January 15, 1925, 8 per cent. was customarily required in the locality. This finding was approved by the lower court. The question was as to the constitutionality of a state statute fixing the price of gas at a rate which would yield a return of less than 6 per cent. In affirming the decision of the lower Court this Court said in *Ottinger v. Consolidated Gas Co. of N. Y.*, 272 U. S. 576, at 579:

"He, (the Master) concluded that the rate of $1.00 per thousand feet would not yield a return of 6 per

> cent., and was therefore confiscatory. With this conclusion the Court below agreed, and we find nothing whatever suggested by the Attorney-General either in the brief or oral argument which would justify material modification or reversal of the final decree in so far as it adjudges and directs appropriate injunctions."

In *Kings County Lighting Co. v. Prendergast*, 7 Fed. (2d) 192, the Master found that the rate for gas would have yielded to the plaintiff not more than 3½ per cent. and recommended a rate of return of 8 per cent. This was approved by the District Court and that decision was modified and affirmed in *Ottinger v. Brooklyn Union*, 272 U. S. 579, where this Court said, page 581:

> "The statute was clearly confiscatory in effect and there was no necessity for the District Court to consider any other objection thereto."

This Court has laid down no unvarying rule that any specific rate of return is necessary to avoid confiscation. *Dayton-Goose Creek R. R. Co. v. U. S.*, 263 U. S. 456. There are many considerations which were operative in the cases decided by this Court and by the lower Federal Courts which do not appear in the case at bar.

Bluefield W. W. Co. v. P. S. C., 262 U. S. 679, holding that 6 per cent. was substantially too low to constitute just compensation *was decided in 1923.* In *McCardle v. Indianapolis Water Co.*, 272 U. S. 400 (Nov. 22, 1926), a rate of 7 per cent. found by the Commission on November 28, 1923, was sustained against attack, this Court saying, page 419, "the evidence is more than sufficient to sustain the rate of 7 per cent. found by the Commission and recent decisions support a higher rate of return." These decisions, referred to in a foot note to the opinion, *range in date from 1919 to 1925.*

In *Monroe Gas Light & Fuel Co. v. Mich. Public Utilities Commission,* 11 Fed. (2d) 319 (Feb. 27, 1926), the court holding that a return of 7 per cent. would not be confiscatory said, page 325:

> "Under these circumstances we do not attempt to determine what the constitutionally minimum rate would be. Somewhat less than 6 per cent. is doubtless confiscatory, even making some allowance in connection with the corporate income tax."

In *Pacific Tel & Tel. Co. v. Whitcomb,* 12 Fed. (2d) 279, affirmed in *Denny v. Pacific T. & T. Co.,* 48 Sup. Ct. 222, the court in approving a conclusion of the special master that a return of less than 7½ per cent. would be confiscatory, said, page 287:

> "The proper principles, as defined by the Court, were applied, and the figures fixed by him was within the limits marked by the controlling cases. Moreover, this Court is not engaged in the task of fixing rates for public utilities, and, even if it be thought that the rate of return fixed by the special master is excessive, it is obvious that, measured by a substantially lower rate of return, the orders of the department here under review would nevertheless be confiscatory because of the improper rate base adopted by the department."

In *Idaho Power Co. v. Thompson,* 19 Fed. (2d) 547, (April 28, 1927), the Court held that a return of "7 per cent. of over" could not be held to be confiscatory.

In *Southern Bell Telephone Co. v. Railway Commission of S. C.,* 5 Fed. (2d) 77 (April 30, 1925), the court approved the special master's recommendation of 8 per cent. His conclusion was clearly influenced (page 89) by the fact that by statute in South Carolina the legal rate of interest is 7 per cent. with 8 per cent. allowable by

special contract and by the further fact that capital in South Carolina invested in banking, *merchandising* and *other businesses* yields a rate of 8 per cent.

In Maryland the statutory interest rate is 6 per cent. (R. 1645).

The Opinion of the Commission.

The Commission gave its reasons for refusing to allow a rate of return of 8 per cent. We submit that they are sound. But whether sound or not, if its conclusion, based on the evidence, is correct, it will not be disturbed. *Virginian R. Co. v. United States,* 272 U. S. 658, 666.

Answering the contention of the Company to the effect that in none of the cases in which a utility was held entitled to earn a return of 8 per cent. were the risks of the utility business as great as they are now in the street railway business, and that consequently this Company was entitled to earn more than 8 per cent., the Commission in effect pointed out that the application of such a principle would necessarily result in raising fares to a point beyond what the service is worth. The Commission did not, as contended below by the Company, hold that "risk" was not an element to be considered nor that it should as a matter of law limit instead of increase the rate of return necessary. What it did hold was that in fact automobile competition limits the rate that street railway companies can (commercially) earn (R. 38). It reviewed the evidence in the record that comparable street railways in other cities were not earning more than 6 per cent., and considered that the probable reason why they did not appeal to the courts to allow them a greater rate of return was the belief that they could not earn 8 per cent. at rates which the public would pay and

that the effort to get an 8 per cent. return would, through the operation of the law of diminishing returns, result in their earning even less than they are earning now (R. 37). Applying the rule of the *Bluefield Water Case*, 262 U. S. 679, that a utility "is entitled to such rates as will permit it to earn a return on the value of the property—equal to that generally being made at the same time and in the same general part of the county on investments in other business undertakings which are attended by corresponding risks and uncertainties," the Commission found that the only comparable business undertakings "attended by corresponding risks and uncertainties" were other street railway companies in the East. This conclusion was severely criticised by the Company in the Court below, undeservedly, we think. It is well known that gas companies and electric light companies through improvements in the art and increasing patronage are able to earn large profits at *reasonable rates* and from time to time even to make reductions in rates. On the other hand, street railway companies are not extending their plants, their business is not increasing, and this is so not because their rates are too low but because their patronage is diminishing because of automobile competition. These companies, therefore, have fallen into the unprofitable class. In respect of rate of return no one would contend that they are entitled to earn amounts equivalent to those made by highly profitable or speculative undertakings, but at the present time gas and electric companies are certainly in the highly profitable class. The risk which the authorities say must be taken into consideration must be the risk of the business under consideration and not the risk of some other business where a high return on capital is demanded and received. It would not be in accordance with the rule of the authorities, we submit, to compare a steam rail-

road with a gas company, but it would be in accordance with the rule to compare one steam railroad with others. It is true that competition as it exists in the case of street railway companies constitutes a risk; strictly commercial undertakings are subject to a like risk; but a street railway company collects its fares in cash; what patronage it commands is subject to but slight seasonal fluctuations and generally, as here, it is protected so far as legally possible in its monopoly.

In conclusion the Commission was entitled on this question of the fairness of the return to take into consideration the fact that a deduction had been allowed for the federal corporate income tax. In *Galveston Electric Co. v. Galveston,* 258 U. S. 388, this court said at page 399-400: "But the fact that it is the Federal corporate income tax for which deduction is made must be taken into consideration in determining what rate of return shall be deemed fair. For, under paragraph 216, the stockholder does not include in the income on which the normal federal tax is payable dividends received from the corporation. This tax exemption is therefore, in effect, part of the return on the investment." And again, in *Georgia Railway & Power Co. v. R. R. Commission,* 262 U. S. 625, at 633, this Court, speaking in 1923, said "the probable return based on the value of the probable income found by the Commission would be nearly 7¼ per cent. It must be borne in mind, as pointed out in *Galveston Electric Co. v. Galveston, supra,* that, since dividends from the corporation are not included in the income on which the normal Federal tax is payable by stockholders, the tax exemption is, in effect, an additional return on the investment. A return of 7¼ per cent.—in addition to this tax exemption—cannot be deemed confiscatory."

IV.

Rates Must Not Exceed the Value of the Service to the Public. The Company Has Failed to Show that a Further Increase in the Rates of Fare Would Not Be, Under the Circumstances, Unreasonable to the Public.

The street railway industry throughout the country is in rapid process of at least partial supersessison by the public and private automobile and bus, but particularly by the private automobile. This was established by evidence produced by the Company. The business is now a competitive one,—the natural monopoly feature usually characteristic of utilities is absent. It is competitive with walking, on short hauls, and with public and private automobile operation on all business.

Hundreds of miles of interurban lines have been abandoned in the last few years. In smaller cities and communities, the urban street railway system has yielded to bus operation.

In the larger cities, the companies have been protected by regulatory bodies against public automotive competition. But, as the commissions themselves have realized and stated, they are helpless to prevent the inroads into patronage made by the private automobile. They can not regulate personal tastes and preferences, or the expenditures of private funds.

Street railway systems generally, like that of the Company, are the result of consolidations of competing lines, built before the days of regulation, and without reference to the actual needs of the public (R. 40). They represent heavy investments in duplicated service. When the passenger trend was upward, this was of

little consequence. Now that it is downward, a fair return on these investments can not be earned at reasonable rates.

The seriousness of the menace of this competitive situation to the future of the street railway industry is not denied or minimized by the Company. On the contrary, its president fully conceded the danger, and relied upon it as a major basis for relief. Passengers, admittedly were falling off at the rate of from three or five per cent. a year, primarily because of automobile competition, when the case was heard. Counsel for the Company referred to present-day street-car service, in their brief before the Commission, as a "break-down" service for the 25 per cent. of the public who did not use the cars regularly, and a "stand-by" service for the 75 per cent. of the public who did.

In the early part of 1927, the street cars in Baltimore were said by Company witnesses to have been carrying 75 per cent. of the travelling public (R. 670). The president of the Company estimated a minimum decline in passengers for 1927 and 1928 of 3 per cent. per annum, with a probable decline of 5 per cent. in 1928 under a ten cent fare (R. 661).

Meanwhile the automobile saturation point is not in sight (R. 694). Price reductions are general in the motor field, and vigorous competitive sales campaigns are in progress. Similar competitive conditions among finance companies, coupled with large amounts of idle capital, have brought about a condition where virtually anyone, regardless of earning power or financial responsibility, can own an automobile. Frequent repossessions do not seem to dull the ardor of the finance com-

panies, or their willingness to underwrite the purchase of a new car for an owner who has failed to pay for his old one.

This situation has materially affected the earnings of the street railway industry, both actual and potential. Until 1920, the normal increase in population in Baltimore afforded this Company an annual increase in passengers of five per cent. Since then, with the increasing vogue of the automobile, the trend has been steadily downward. All over the country, street railway fares are being fixed, by regulatory bodies and by the companies themselves, with full appreciation of the value of the service to the remaining part of the public that still uses the cars.

Mr. Hoyt, a Vice-President of the National City Company, a witness produced by the Company, recognized this fact in his testimony before the Commission in a previous case (R. 1275). He had testified that eight per cent. was the return necessary to attract capital to a business. The following ensued:

> "Q. Do you think then that the same rate of return should be fixed for the Consolidated (Gas and Electric) Company, for the United Railways and Electric Company, and the Chesapeake and Potomac Telephone Company?
>
> "A. You are asking me *another thing.* The same rate of return; you mean to say that a Commission in fixing *rates of fare* or what not should be guided *—they must take into consideration what the traffic will bear, etc.*
>
> "Q. Of course.
>
> "A. But I would *still* say that you couldn't *enlist the capital necessary to create the railways here,* if

there were no railways here, *with an expectation of under 8 per cent*" (Italics ours).

As has been seen, the president of the Company recognized this situation, and the fact that it limits the fares the Company can charge the public. He thinks the limit is 10 cents (R. 410, 673, 1205). Whether it is that, or a token charge of 8¾ cents, is the issue in this case. More correctly stated, the issue is whether it was confiscatory for the Commission to limit the fare at the above token levels.

These fares are among the highest prevailing in any city of the United States with a population of 100,000 or over, regardless of the rate of return yielded. Most of the cities in that category have materially lower rates. Certainly other factors than those usually at work in the making of rates have been operative in the street railway industry, or such a situation would not obtain.

People's Counsel Exhibit No. 25 (R. 1517) shows that of eleven large cities in the United States comparable to Baltimore, charging cash fares ranging from 5 cents to 10 cents, only one is earning 6 per cent. That is the Chicago surface lines, charging a 7 cent, three tokens for 20 cents, fare.

The situation thus indicated is typical of the industry as a whole.

Two expert witnesses were produced by the Company to testify as to rate of return,—Mr. Nash and Mr. Downs, —both thoroughly qualified in matters of street railway operation. Under cross-examination, Mr. Nash, a Vice-President of Stone and Webster, said that of some twenty street railway properties operated by that Company, only

a handful had ever been valued, and none was earning 6 per cent (R. 842, *et seq.*) Of some ten or fifteen street railways operated by Day and Zimmerman, with whom Mr. Downs was connected, the highest rate of return actually being earned by a street railway company was 3 per cent. (R. 864). The fares charged in all the communities involved were less than those obtaining in Baltimore. A graphic cross-section of the industry was thus afforded. It was nation-wide in extent. They stated that it could not completely be paralleled in any other field of utility endeavor (R. 847). It showed the effect of service value on rate of return and fares.

Mr. Emmons, President of the Company, stated, in the course of his testimony, that he did not know of any street railway companies in the country earning 7 per cent. or 8 per cent., and knew that few were earning as much as 6 per cent. (R. 674). He called attention to the fact that the Duluth Company which was in 1925 assured a 7½ per cent. return by the courts, was only earning 1.82 per cent. on the value of its property (R. 673).

The fare fixed by the Commission in the *first order* assailed in this case is on a level with the highest token fares prevailing in any city in the country comparable to Baltimore, except Boston (R. 1511). It was materially higher than that obtaining in many cities comparable to Baltimore (R. 1511). It was calculated to yield a rate of return in excess of 6 per cent., which virtually none of the companies in other cities are earning.

The situation in Boston is anomalous. The fares are fixed, not by the Public Service Commission, which has repeatedly declared its opposition to the 10 cent fare as excessive, unreasonable and uneconomic, but by a Board of Public Trustees which operates the property. It does

not yield the Company the 6 per cent. return granted it under a service-at-cost contract, but one of 4.64 per cent. An annual deficit is paid the Company out of the tax rate (R. 1017). Similarly, the fair return assured by service-at-cost contracts in Cincinnati and Cleveland is not being earned (R. 895).

What is the duty of a commission confronted with a situation of the character above outlined? How far is it justified in going in increasing fares to meet inroads into revenue occasioned principally by the supersession of the business by another service? Must it continue to increase rates, so as to yield a fair return, as long as anyone continues to use the service, and thus compel the public to absorb the effect of the operation of economic laws in the business? Must it not only do this, but actually allow the utility a larger return than it otherwise would, as the complainant company contends, because of the degree of risk attending a declining business? Must it do this in the face of the fact that constantly increasing fares, caused by further competitive incursions, will entail still greater losses in patronage?

These are questions that suggest themselves in connection with the present case. No increase of rate or of return could, or did, stay the supersession of the horse cars by the cable car, the cable by the overhead trolley, the canals by the railroads. Had this been attempted, the trend of decline of the waning business would only have been more strongly accentuated. Economic forces are not subject to legislative or administrative control. Their operation should and must be unimpeded. It is a risk assumed by anyone embarking upon any business of any character, public or private, that progress in the art, or competitive forces, may destroy it. He can not thereupon ask the public to set him up in the competing

business, or to insure him against its inroads. The public has not undertaken to do either.

It may be noted that the same situation here under discussion has presented itself in the steam railway industry. In an article entitled "The Problem of Valuation," in the Harvard Law Review for March, 1928, Mr. James C. Bonbright, of the Columbia University School of Business, says (p. 602):

> "Despite the fact that we have been passing through a period of prosperity and of high prices unexampled in the history of this country, not only have the railways been refused the right to earn anything approaching a current rate of return on their estimated reproduction cost, but a large group of them has admitted before the Interstate Commerce Commission that, even if they were to receive official permission to earn such a return, they would be unable to do so because of the fact that the traffic would not bear rates sufficiently high to secure this object."

In an editorial in "The Railway Age" (1927; 83 Railway Age, 1147), the following appears:

> "It is highly improbable that it would even be possible to get the railways to agree to seek an advance in rates sufficient to give a so-called fair return on a reproduction cost valuation. Their managers would know that if they did so, they would encounter the united opposition of regulating commissions and shippers, and would arouse public sentiment more hostile than ever existed before. Railway officers fully realize that rates should be made not only in accordance with what the traffic will bear, but also in accordance with what public sentiment will stand."

As already shown above, the rate of return of the steam railroads of the country as calculated in 58 Inter-

State Commerce Commission Reports, 220, was as follows:

	1921	1922	1923	1924	1925	1926	1927	1928
Per cent.....	3.02	4.0	5.1	4.9	5.5	5.8	5.1	5.5

This clearly indicates that factors beyond the control of commissions or companies may limit a utility's earnings so as to deprive it of what otherwise would be a fair return. This is the general situation in the street railway industry. It should be constantly borne in mind, however, that the rates fixed by the Commission in this case are estimated to yield the Company in excess of six per cent. They are not confiscatory. They are above the level of return prevailing in the industry. They are so high as to have materially disturbed the riding habit.

The Authorities.

It is a well established rule of law that rates must in all events be reasonable to the public affected. *Chicago, Milwaukee and St. P. Rwy. Co. v. Minnesota* (1890), 134 U. S. 418; *Covington and L. Turnpike Road Co. v. Sandford* (1896), 164 U. S. 578; *Smyth v. Ames* (1898), 169 U. S. 466; *San Diego L. and T. Co. v. National City* (1899), 174 U. S. 739; *Simpson v. Shepherd* (1912), 230 U. S. 352; *Darnell v. Edwards* (1917), 244 U. S. 564; *P. S. C. v. East Providence Water Co.* (R. I. Sup. Ct.), 136 Atl. 447; *Re: San Diego Consol. Gas and Elec. Co.* (Cal.), P. U. R. 1919 D, 924; *Danbury v. Danbury and B. Gas and Co.* (Conn.), P. U. R. 1921 D, 731; *Re: Richmond L. H. E. L. Co.* (Ind.), P. U. R. 1917 B, 300; *Re: Idaho Power Co.* (Ida.), P. U. R. 1927 C, 731; *Re: Castine Water Co.* (Me.), P. U. R. 1924 B, 529; *Re: Public Franchise League,* 24 Mass. G, and E. L. C. R. 20; *Re: Capital City Water Co.* (Mo.), P. U. R. 1918 D, 561; *Re: Manchester and D. St. Ry. Co.* (N. H.), P. U. R. 1916 F, 526;

Re: Bennington Water Works Co. (N. H.), P. U. R. 1922 B, 385; *Spurr, Guiding Principles of Public Service Regulation,* Volume 3, p. 530.

This is true even though the rates fail to yield a fair return on the fair value of the property, the right to the return being subject to the limitation that the rates must be reasonable. *Re: Lewiston Gas Light Co.* (Me.), P. U. R. 1921 A, 561; *Kansas City v. Kansas City L. and P. Co.* (Mo.), P. U. R. 1918 C, 659.

In *Hamilton v. Caribou Water, Light and Power Company,* P. U. R. 1922 E, 801, at 804, the Maine Supreme Judicial Court said:

> "This Court and the Federal Supreme Court, however, have repeatedly said that the rates charged by a utility must be reasonable both to the utility and to the customer. The public is entitled to demand that no more be exacted for the service of a public utility than the services rendered are reasonably worth. Smyth v. Ames, 169 U. S. 466, 547; Kennebec Water District v. Waterville, 97 Me. 185, 202, 54 Atl. 6. The reasonableness of rates relates both to the Company and to the consumer. 'Rates must be reasonable to both, and if they cannot be to both, they must be to the customers.' Brunswick and T. Water District v. Maine Water Co., 99 Me. 371, 380, 59 Atl. 537, 540. It would be quite as objectionable to take from the consumer more than the service was reasonably worth, as it would be to deprive the Company of a fair return upon a fair value of its property. *If the rates established represent the maximum reasonable value of the service to the consumer, it cannot be said that they are confiscatory as to the company, whatever may be the result upon its return*" (Italics ours).

This is a direct contradiction of the Company's contention that value of service can not limit rates below

the level of confiscation. It will be seen later that this Court has never recognized such a limitation on the doctrine.

The principle that rates must in no event exceed the value of the service, regardless of return or confiscation, is as old and as firmly established as the rule that a utility is entitled, when that principle is inapplicable, to a fair return on the fair value of its property. It has been expresed by this Court as follows:

Chicago, Milwaukee and St. P. R. Co. v. Minnesota (1890), 134 U. S. 418.

"The question of *reasonableness* of a rate or charge for transportation by a railroad company, involving, as it does, the element of reasonableness both as regards the company and *as regards the public,* is eminently a subject for judicial investigation, requiring due process of law for its determination" (Italics ours).

Covington and L. Turnpike Road Co. v. Sandford (1896), 164 U. S. 578.

"It is alleged here that the rates prescribed are unreasonable and unjust to the company and its stockholders. But that involves an inquiry as to what is reasonable and just for the public. *If the establishing of new lines of transportation should cause a diminution in the number of those who need to use a turnpike road, and, consequently, a diminution in the tolls collected, that is not, in itself, a sufficient reason why the corporation operating the road should be entitled to maintain rates that would be unjust to those who must or do use its property.* The public cannot properly be subjected to unreasonable rates in order simply that stockholders may earn dividends. * * * If a corporation cannot *maintain such a highway and earn dividends for stockholders, it is a misfortune for it and them which the*

Constitution does not require to be remedied by imposing unjust burdens upon the public" (Italics ours).

The rule thus laid down is the direct negation of the Company's claim that rate of return should be increased to offset declining business. It by no means appeared that this Court or the Turnpike Company considered the industry involved to be moribund. The Company's complaint was that it was unable to earn 14 per cent. on its stock, which the legislature had assured it. The effort of the Judge of the Circuit Court No. 2 of Baltimore City to limit the application of the principle of service value to developing or moribund industries is accordingly seen to be without foundation (R. 74).

Smyth v. Ames (1898), 169 U. S. 446.

"It cannot, therefore, be admitted that a railroad corporation maintaining a highway under the authority of the state may fix its rates with a view solely to its own interests, and ignore the rights of the public. But the rights of the public would be ignored if rates for the transportation of persons or property on a railroad are exacted, without reference to the fair value of the property used for the public *or the fair value of the services rendered*, but in order simply that the corporation may meet operating expenses, pay the interest on its obligations, and declare a dividend to stockholders.

"If a railroad corporation has bonded its property for an amount that exceeds its fair value, or if its capitalization is largely fictitious, it may not impose upon the public the burden of such increased rates as may be required for the purpose of realizing profits on such excessive valuation or fictitious capitalization. * * *

"* * * What the public is entitled to demand is that no more be exacted from it for the use of a pub-

lic highway than the services rendered * * * are reasonably worth." (Italics ours).

San Diego Land and Town Co. v. City of National City (1899), 174 U. S. 739.

"This court had previously held in Road Co. vs. Sandford, 164 U. S. 578, 596, 598, 17 Sup. Ct. 198, which case involved the reasonableness of rates established by legislative enactment for a turnpike company, that a corporation performing public service was not entitled, as of right, and without reference to the interest of the public, to realize a given per cent. upon its capital stock; that stockholders were not the only persons whose rights or interests were to be considered; and that the rights of the public were not to be ignored. The Court in that case further said: *'Each case must depend upon its special facts;* and when a court, without assuming itself to prescribe rates, is required to determine whether the rates prescribed by the legislature for a corporation controlling a public highway, are, as an entirety, so unjust as to destroy the value of its property for all the purposes for which it was acquired, its duty is to take into consideration the interests *both of the public and of the owner of the property,* together with all other circumstances that are fairly to be considered in determining whether the legislature has, under the guise of regulating rates, exceeded its constitutional authority, and practically deprived the owner of property without due process of law. * * * *The utmost that any corporation operating a public highway can rightfully demand at the hands of the legislature, when exerting its general powers, is that it receives what, under all the circumstances, is such compensation for the use of its property as will be just,* both to it and to the public.'

"These principles are recognized in recent decisions of the Supreme Court of California. San Diego Water Co. v. City of San Diego (1897), 118

Cal. 556, 50 Pac. 633; Redlands L. and C. Domestic Water Co. v. City of Redlands (1898), 53 Pac. 843, 844.

"The contention of the appellant in the present case is that in ascertaining what are just rates the court should take into consideration the cost of its plant; the cost per annum of operating the plant, including interest paid on money borrowed, and reasonably necessary to be used in constructing the same; the annual depreciation of the plant from natural causes resulting from its use; and a fair profit to the company over and above such charges for its services in supplying the water to consumers. Undoubtedly, all these matters ought to be taken into consideration, and such weight be given them, when rates are being fixed, as, under all the circumstances, will be just to the company and to the public. *The basis of calculation suggested by the appellant is, however, defective in not requiring the real value of the property and the fair value in themselves of the services rendered to be taken into consideration.*" (Italics ours.)

Simpson v. Shepard (1912), 230 U. S. 352.

"The property of the railroad corporation has been devoted to a public use. There is always the obligation springing from the nature of the business in which it is engaged—which private exigency may not be permitted to ignore—that there shall not be an exorbitant charge for the service rendered."

See also—

Opinion of Mr. Justice BRANDEIS, in *S. W. Tel. Co. v. P. S. C.* (1923), 262 U. S. 276, 290.

No limitation of the rule to moribund or developing business was contained in any of these cases.

The Peculiar Applicability of This Rule to the Street Railway Industry Under Present Conditions Is Well Recognized.

The applicability of the limitation imposed by service value has been fully recognized in the street railway industry. Competition has resulted in increased rates, which have entailed further passenger losses. Rates have had to be limited to what the traffic would bear.

The California Commission said, in *Re Pacific Electric Railroad Company*, P. U. R. 1922 C, 134 (page 144):

> "If 8 per cent. were at the present time held to be a fair rate of return, then a reasonable net earning after operating expenses, depreciation and taxes would come to approximately $5,150,000 (exactly $5,153,716). *We do not hesitate to say at this point that if rates were fixed to produce such a return, regardless of all other circumstances, such rates would, in our opinion, be unreasonable rates and would not be just and fair to the public.* It is well understood that with local street railway and electric interurban rates, there exists what may be termed an *economic maximum* in the rate, which practically cannot be exceeded *regardless of theoretical rate base and fair return calculations.* It happens that in the case of electric railways, and especially in the case of this particular railway, this economic maximum is determined to a large extent, by *competitive forces, and we have reference now to the competition of the private and public service automobile and truck.*" (Italics ours.)

Re Fishkill Electric Railway Company (N. Y. P. S. C. 2nd Dist.), P. U. R. 1919 D, 1, at 7:

> "The supply of trolley service and the demand for such service are often not in proper adjustment. The builders of the trolley systems built according to their varying judgments. Naturally the usual

average of mistakes was maintained in these as in all human enterprises that must necessarily deal with futures such as city, suburban and interurban growth, direction of such growth, *competitive methods of transportation*, life of machinery and materials, rate of electrical machinery equipment, with consequent obsolescence, labor costs, and numerous other variable factors. *The legal entitlement to a reasonable return on the value of the property used in the public service is only a right to earn same, not a guaranty.* If errors of judgment were made with regard to the factors above mentioned it might well develop that the value or cost of a utility system might be greater than the public demand required. This requirement is the natural result of an economic law in operation, and of course cannot be altered by order of this Commission. * * * A requested increase may apparently be justified because of a lack of reasonable return; and yet the increase asked might, if granted, actually result in a decreased, instead of an increased, revenue. *Where a deficiency in revenue must be met, the real problem is to find and fix the rates that will permit the most people to ride and still be high enough to cover costs. These rates may well be called the economic rates.* Lesser rates spell bankruptcy; higher rates mean reduced operating revenue and a similar result. When these rates are finally found, they measure the economic demand for trolley service in that community. If the service is more extensive or more expensive than such demand requires, then the system to become and remain solvent must scale sufficient assets or abandon enough of its tracks, or both, to reduce the outgo. The income has reached its limit at that point."

It will be noted that the Commission did not increase the rate of return because the business was declining.

In *Re Alton G. and St. L. Traction Co.*, No. 8226-A, May 7, 1919, the Illinois Commission said (P. U. R. 1919 F, 136):

"The Commission has had occasion in numerous other causes to observe the results of increased fares for street railway service, and has found in these cases from traffic studies made subsequent to the increase of fares, that the actual gross revenue realized in most cases is not in proportion to the increased rates of fare authorized. This condition appears to have existed in Alton to a limited degree, and would probably be more emphasized if the further increase were authorized. *In other words, the increases of fare have a marked effect upon the traffic, tending to materially decrease it.* Obviously increases which bring about such results do not satisfactorily meet the situation from the utility's standpoint, and result only in inconvenience and dissatisfaction to the patrons. *From a practical standpoint, this must receive serious consideration in a determination of the applicability of the proposed increased fares.*"

In *Re Helena Light and Railway Company* (Mont. P. S. C.), P. U. R. 1925 E, p. 1, at p. 3, the Montana Commission said:

"The fortunes of the street railway ebb and ebb. Most tides turn, but this one appears to recede steadily. *Motor vehicle competition, both regulated and unregulated, is primarily responsible for the reliction in revenues.*"

In *Re Ithaca Traction Corporation* (N. Y. P. S. C. 2nd Dist.), P. U. R. 1919 B, 616, the opinion contains the following:

"There is a limit beyond which trolley fares should not go; in fact that cannot be advanced beyond a certain point without disastrous results to the Company. * * * The people should not be required to pay an excessive fare. If they are required to pay such fare the result will be detrimental to the corporation itself"

In the 6 cent Fare Case involving the complainant Company, the Maryland Commission recognized the effect of service value on street railway rates:

> "The authorities of highest repute are practically unanimous to the effect that *the public should not be required to pay for a public service more than such service is fairly and reasonably worth, and the cost of rendering that service is merely one of the evidences of the fair worth of the same.* * * * This Commission is fully mindful of the desirability of upholding the credit of all public utilities subject to its jurisdiction to the fullest extent consistent with justice to the general public. *But it is also fully mindful of the ultimate dangers of a false credit bolstered up by orders establishing rates for services which are not justified by the fair worth of the service rendered.*"
>
> 10 Md. P. S. C. Rep. 39, 58.

The Limitation of Service Value Applies With Peculiar Force Where a Business is as Yet Undeveloped, or When it is in Process of Decline.

There are two typical classes of cases in which the value of the service to the public exercises its most marked limitation on the right of a utility to earn a fair return on its valuation. The first is the case of a utility that has entered an undeveloped or underdeveloped territory, and is seeking to survive the developmental period. The second is that of a utility in a developed field, faced with loss of a considerable part of its existing patronage through competition or other causes.

In the first class of cases, no doubt has even been entertained but that the rates of the utility, such as a railroad, entering undeveloped territory, frequently can not be made compensatory during the period of growth, in fairness to the public.

Re Illinois Northern Utilities Commission (Ill.), P. U. R. 1920 D, 979:

> "Gas plants, located in small communities, cannot expect rates sufficient to make them paying concerns, because such rates would exceed the value of the service to the consumer."

Fett v. Firth (Cal.), P. U. R. 1922 B, 505:

> "The investment in a water utility serving a tract that is only partially settled and in its development stage, cannot be used as a basis for establishing rates, but consideration must be given to the value of the service and the ability of the consumers to pay."

In the second class of cases, and the case with which we are here concerned falls in the second class, the rule is as definitely formulated.

Re *Leadville Water Company* (Colo.), P. U. R. 1921 D, 172:

> "The Commission is of the opinion that no rate can be fair and reasonable unless it is fair and reasonable to the consumer. For example, suppose this plant actually cost $1,000,000 and a valuation by the Commission's engineer would support this cost as an actual valuation upon which this Company is entitled to a return; suppose that the actual population has decreased from 16,000 to 5,000; that the actual users of water have decreased in number to only about 50 per cent. of what they were three years ago, and that the rate necessary to be charged to earn a fair return upon this sum as a fair value would be excessively high and practically prohibitive; should the present consumers be penalized with rates to maintain a plant far in excess of its present needs? How far should this principle of a fair return on the investment be carried? Suppose the City of Leadville's population should decrease to 500 people; should the remaining 500 be compelled to

pay rates to maintain this plant as originally built and pay a return on the original investment? *This must be answered by the statement that if the Company finds it is unable to render service at fair and reasonable rates, it must accept the burden itself, and cannot be permitted to pass its own misfortunes on to the consumers by placing on them an undue burden"* (Italics ours).

The formula suggested by the Company would have supplied a quite different solution. The Company's rate of return would be made higher than that earned by successful companies because of the risk inherent in the business.

R. J. Darnell v. Edwards, et al., constituting the Mississippi Railroad Commission (1917), 244 U. S. 564, page 569):

"It is insisted that upon the proofs, and especially by actual experiment, the rates established by the Commission were shown to be confiscatory. * * *

"It is well established that in a question of rate-making there is a strong presumption in favor of the conclusions reached by an experienced administrative body after a full hearing. * * * Practically the entire business of the road, at first, was hauling logs from complainant's land to a mill operated by R. J. Darnell, Incorporated, at Memphis. *That mill was destroyed by fire in June,* 1913, *and thereafter the corporation constructed a mill at Batesville, but this was not placed in operation until March* 17, 1914. *In consequence there was a heavy falling off in traffic on the road, there being no Darnell shipments except such logs as were on hand when the Memphis mill was burned.* * * *

"The circumstances that a road may have been unwisely built, in a locality where there is not sufficient business to maintain it, may be taken into account. * * * *And the nature and value of the service rendered by Company to the public are matters to be*

considered. Covington and L. Turnpike Road Co. v. Sandford, 164 U. S. 578, 597, 41 L. Ed. 560, 566, 17 Sup. Ct. Rep. 198; Smyth v. Ames, 169 U. S. 466, 544, 42 L. Ed. 819, 848, 18 Sup. Ct. Rep. 418."

"* * * It is sufficient for the present to say that the experimental period was too brief;—and conditions during the entire period covered by the testimony have been too abnormal to enable us to say that the Commission's rates are confiscatory." (Italics ours).

The Company in the above case contended that it was not earning any return at all. This situation was largely attributable to loss of business through the destruction of a mill. The situation in the latter respect resembles that of the complainant Company.

Did this Court hold that the logging railroad was entitled to eight per cent. plus, because of the risk attending its business? That a utility which could not survive the test of competitive conditions and private business should be held harmless by the State against loss?

The application of the formula asserted by the Company was not even suggested by, or apparently to, this Court. That the process of decline should be accelerated by increasing the rate of return of a waning business has never before, it is believed, been seriously argued. It has not the merit either of practicability or logical appeal, though it has those of novelty and ingenuousness. Its adoption would be disastrous.

The application of the limitation on rates imposed by service value has never been limited to cases within the two classes above discussed. They are illustrative because its operation is, as to them, accentuated. Courts and commissions have given abundant recognition to the

fact that the street railway industry is a waning industry. But that is a result, not a cause. The cause is automobile competition, which necessitates increased rates. And that there is a limit to be placed on rate increases, in the public interest, is conceded.

Valuation, rate of return, and value of service are facts to be considered in every case, and accorded such weight as they merit. Where rates are inherently low, as compared to rates for similar service prevalent elsewhere, or the cost of living, value of the service will not be accorded weight. Where the contrary is true, it will be accorded weight, and that weight may be controlling. But in all cases, the consideration and weighing of these factors is not a matter of mathematical formula, but of common sense, calling for the exercise of sound discretion on the part of the commission. And rates have been limited in some cases by service value in every branch of utility endeavor.

The Present Value of a Street Car Ride is Not in Excess of a Token Charge of Eight and Three-Quarter Cents.

In a recent decision, the New York Public Service Commission said:

> "The fare requested by petitioner in the cities is a 10 cent cash fare with three tickets for 25 cents. * * * These fares *will not yield a revenue sufficient to allow what is regarded as a fair average rate of return upon the value of the property used in the public service, but they may be as high as the traffic will stand.* The exhibits presented show a marked decline in number of passengers carried since the year 1917. *This is undoubtedly due to the large use of privately owned automobiles.*" *Re Fonda, J., etc., R. Co.* (1927), P. U. R. 1927 B, 762 (Italics ours).

In *City of Albany v. United Traction Co.*, P. U. R. 1927 D, 637, at 660, the New York Commission said:

> "Annual reports of this Commission for each of the past several years have directed attention to the fact that net revenues of electric street railroads throughout the State have almost uniformly steadily decreased, in some cases being insufficient to pay operating expenses and fixed charges.
>
> "Our study of the situation indicates that while in some instances it may have been caused by inadequate rates, either fixed by a regulatory body or by franchise requirements, yet primarily the cause is a diminution in traffic due to the ever increasing demand of the public for motor transportation. The difficulties these utilities find themselves in have not been caused so much by the present high level of labor and material costs, but result from the general availability of low cost transportation operated by the individual, as well as a partial failure on the part of the electric railroad industry to understand and devise means of meeting the situation."

The Commission allowed a rate of 10 cents, with 13 tokens for $1, estimating that it would yield 6.11 per cent.

In *Re Western New York and Pennsylvania Traction Co.* (N. Y. P. S. C., 2nd Dist.), P. U. R. 1920 A, 951, the Company sought a 10 cent urban rate. The Commission fixed an eight cent rate instead, *although the Company was not earning a fair return,* because "it is believed that this will work better results than the higher rate demanded so far as the corporation is concerned, and it certainly will work *less hardship to city passengers.*"

The attitude of the commissions and courts toward the straight ten cent fare is well illustrated by two Massachusetts cases:

Donham v. Public Service Commission (Mass. Sup. Ct., 1919), 232 Mass. 309, 122 N. E. 397, P. U. R. 1919 C, 880.

"As already stated, the schedule now proposed by the receiver is in substance to eliminate all tickets, including workmen's tickets, to establish city zones with a uniform 10 cent fare, and to divide the country lines into zones about two miles in length with a minimum fare of ten cents for 2 zones and 5 cents for each succeeding zone. With reference to this it is said in the report (the report of the Commission) that in no other communities of similar size in the United States is a minimum fare of 10 cents charged or even proposed, and that nowhere else in the country is so radical and *burdensome* an increase in fares made or proposed as compared with that of October 1, 1916, on the Bay State System. It is said, also: 'In the first Bay State Rate Case the Commission held that, to sustain the burden of proof imposed by the statute, the company must satisfy the Commission that there is at least a reasonable prospect that the change in fares desired will result in an increase in revenue. In the present instance the receiver and the management apparently believe that the new tariff will produce substantially the gain in revenues estimated. On the other hand, the remonstrants, many of them official representatives of the cities and towns involved, were unanimous in expressing the conviction that a 10 cent minimum fare will be disastrous in its effect upon the Company itself, and it is our belief that they were entirely sincere in this expression. *It is also within our knowledge that many street railway officials are skeptical as to the wisdom of so high a minimum rate. Street railway fares have been more frequently and more generally raised in Massachusetts than in any other part of the country; and while it cannot be said that no advantage to the companies has resulted, it is true that in nearly every case the gain in revenue has been less and often far less than the prior estimates.* Other factors have entered in, but making all due allowances, *it is quite clear that*

increases in fares impose a burden upon the public which considerably exceeds the benefit which they bring to the companies.

"• • • 'The cities served by the Bay State are compact, the distances are short, and the population is made up on the whole of persons of very moderate means. It is possible that there are sufficient patrons who cannot find other means of transportation, who cannot walk or move their place of residence, and who are obliged to use the Bay State cars, so that revenue advantage may be gained from the proposed new fares. Our experience in many other cases, however, leads us to place little faith in the estimates of gain submitted, and to share the fears expressed by the representatives of the communities. The best that can be said of the new schedule, from the point of view of the company, is that it is a chance. Viewing the new rates from the public point of view, there is a certainty of a most disturbing effect. It is impossible to raise fares within a period of two years to the extent proposed in the company's new tariff, without disrupting and dislocating the conditions to which community life has become adjusted. The new schedule means that the Company will practically abandon the short haul business in the city centers, and from the centers to the nearby suburban towns the rates will be so increased that it is difficult to believe that much regular daily traffic can in the long run be preserved. Still more disturbing, however, is the fact that even if the new fares should prove unsuccessful in producing the revenue desired, experience has shown that it would be well-nigh impossible thereafter to reduce them'."

The Commission refused to permit the Company to put the proposed fares into effect, but substituted a schedule of its own providing for a fare on city lines of 7 cents, to be made available to the public only through the purchase of tickets or tokens at the rate of 5 for 35 cents, with the proviso that the cash fare should be 10 cents.

The Court found that this action of the Commission was not unlawful or unreasonable, although the Company was not earning a fair return on its property, but a return that would have been confiscatory but for the question of the inherent fairness of the rates to the public.

Re *Middlesex and Boston Street Railway Company* (Mass. P. S. C.), P. U. R. 1919 F, 40 (page 41).

"Whatever view may be entertained in regard to the effect of past increases, the effect of a further increase to 10 cents, a sharper increase than any heretofore made, *must be largely speculative.*

"From its study of the results of various forms of fare increases established by other companies, the Commission is inclined to believe that a readjustment of fare zones, with a lower rather than a higher rate of fare, is likely to yield a larger increase of revenue for the Company, *and to be preferable also from the standpoint of the public.*"

This is the attitude of the courts and commissions of the State in which the greater number of 10 cent basic fare cities are located.

In *Wood v. Elmira Light, Water and Railway Company* (New York P. S. C.), P. U. R. 1927 B, 400, 464, the New York Commission refused to approve a 9 or 10 cent flat fare, which would be required to yield the company an 8 per cent. return, on the ground that the rates could not be collected by the Company if authorized. They were more than the traffic would bear. They were beyond the economic limit.

The Company contends that ten cents is not in excess of the value of a car ride under present-day conditions, because operating expenses per car mile have greatly

increased since 1913, when the 5 cent far was in force, and because the wages of union labor have more than doubled since that date (Company Exhibit No. 29; R. 1460).

Obviously, in a study of the value of service to the public, its cost to the Company is not entitled to controlling importance, or indeed to much importance of any character (R. 140). Cost of service and value of service are two different things. Each is of significance in its proper setting. They should not be confused.

Even if one indulged in the violent assumption that wages of union labor represented the purchasing power of the Baltimore public, wage increases do not furnish a satisfactory test of street car service value. A ride is not worth all that some portion of the community whose income has greatly increased is able to pay for it. Its worth might, however, be measured with reference to its present position as compared with the general change in price levels for other commodities, and the cost of living. Based on this comparative standard, what is the worth of a car ride today? The cost of living is 173 per cent. of what is was in 1913 (testimony of Doctor Hollander (Company witness) R. 1176; Company's Exhibit No. 29, R. 1460). This would justify a fare of 173 per cent. of 5 cents, between eight and nine cents; i. e., that fixed by the Commission. Certainly, it would not justify a ten cent fare. In other words, the Company's testimony and exhibit support the Commission's finding and not the Company's contention.

The test above adopted places the car fare on a level with the United States Bureau of Labor curve representing the cost of living in Baltimore. It is an attempt to evaluate service in terms of 1913 costs. Some such ob-

jective standard must be applied, rather than mounting Company costs or public paying capacity. Not all goods or services are worth what they cost to produce.

It is not conceded that car fares should be increased proportionately with the increase in the price levels of other commodities. The competitive feature of the street car business, above referred to, might limit the fare at a lesser figure than increase in the price of other commodities would otherwise warrant. Certainly, however, the test is a fairer one than those arbitrarily adopted by the Company.

Value of service is entitled to controlling weight in the fixing of the fare of the respondent Company, in that any charge over and above the rates fixed by the Commission would exceed its worth to the public. The Courts have not required that the State subsidize a declining industry, but they have laid down the rule that the interests of the public should be protected. In this case, the Commission has protected both utility and public. It has granted reasonable rates that yield a fair rate of return. Its action should not be disturbed.

Intrinsic Value and Economic Value.

Before the Commission the Company did not deny the soundness of the rule laid down by the above authorities to the effect that rates must not exceed the value of the service to the public ragardless of the return to the utility. Its argument was, first, that a ten cent flat fare proposed by it was in itself reasonable to its customers, and secondly, that such fare was not so high as to cause such a falling off in passengers that the increase in fare would yield no net increase to the Company, that is, that a ten cent fare would not exceed the economic limit.

The economic limit, however, does not measure value to the public. A fare may be made so high as to be profitable regardless of drastic curtailment of riding. The true test is the effect of a given rate on the riding habit. That is the instinctive reaction of the public to the rate.

Intrinsic value and economic value, as above used, represent two distinct ideas. A rate of fare too high, either intrinsically or economically, would be indefensible,—though for different reasons. Our contention is that a ten cent flat fare as proposed by the Company would be beyond the intrinsic and economic value of a car ride.

The Company argued before the Commission that "flat ten cent fares are in themselves reasonable to its customers—not more than the service is worth"; that is, that such fares are intrinsically worth ten cents flat. What then is intrinsic value? And if there is such a thing as the intrinsic value of a car ride, how can it be ascertained? Our view is that the principal element which establishes the value of a car ride is to be found in the demand, *when such demand is permitted to operate free from artificial conditions.*

Our opponents, however, have undertaken to split up the idea of intrinsic value into certain component factors, and taking these separately, to show that each factor leads to the conclusion that a car ride is now worth not less than ten cents flat to the customer, i. e., that the intrinsic value of a ride is not less than ten cents. We submit that even from this method of approach, which we think is fundamentally unsound, the results obtained are inconclusive. It is true that the capacity to pay of the ordinary car rider has increased in recent years. But how can the value of a service or a commodity be fairly measured by the capacity of a purchaser to pay?

This is the language of taxation, and not of commerce. If capacity to pay is the standard of value, then, of course, the wealthy would pay one rate and the poor another. It is submitted that one of the central ideas behind the establishment of public service commissions was to prevent the exaction by public utilities of fares measured by the capacity of the public to pay.

Should the value of a car ride to the consumer be measured by the *cost to the company* of furnishing the ride? It is, of course, true from one point of view that cost is an element of value. But in some cases it may have no importance at all. Kerosene oil for lighting purposes, for example, may be of better quality and may cost more to produce than it did twenty years ago; but to a man whose house is lighted by electricity, its value has not been increased by this additional cost but, as to him, has actually been diminished by the introduction of a new factor—electricity. Again, cotton stockings may cost more to produce than they did in pre-war days, but they have not more but less value in the eyes of the purchasing public, who want not cotton stockings but silk ones. Would a manufacturer of cotton stockings expect to keep on manufacturing at a greater cost and to demand for them a greater price because of their greater cost, or would he go into the silk stocking business? In short, costs without relation to demand furnish no criterion of value.

In some respects it is true that a car rider now would get more for a ten cent fare than the pre-war five cent fare gave him. But does this fact increase the worth of a car ride to the customer to ten cents? It does not, unless the assumption on which the argument is founded is true, i. e., that the five cent fare was itself a reasonable fare.

Considering the long history of the street railway companies, their experimental stages, their wasteful construction, the losses they were able to absorb and still make money, it may well be doubted whether a five cent fare did not represent in its day a high fare rather than a low one.

Furthermore, in many respects, the car rider of today gets less for his money than he got a generation or more ago. Then, he got "rapid transit"; today the tracks are congested with automobiles and travel is slowed up. The "skip-stop" is a novel idea—not a popular one. Formerly it was possible, in off-peak hours, to get a street car without a long wait; today, time as well as money is saved by walking, instead of riding, short distances.

But, says the Company, the service it furnishes is *worth having;* and service worth having is worth what it costs, plus a fair return on capital. The evidence that the service is worth having (so the argument runs) is found in the fact that people do use the cars, though in steadily decreasing numbers, and that, in spite of the fact that more people every year are using automobiles instead, the street car service still remains a necessity. For such a necessity, they argue, the public must pay,—its cost plus a profit. Is the transportation service of the Company an economic necessity in the sense that its (now) fewer patrons must be compelled to pay the costs (including a profit) of operating a plant built to meet the needs of the public at a time when street cars were the *exclusive* means of transportation for *all* the people? In the true sense, a necessity is something which must be had—something for which the demand is so strong that if the agency furnishing the demand were destroyed, it

would be immediately replaced. Now it is true, that *transportation* in Baltimore is a strict necessity in this sense. It is none the less true, that the particular form of transportation furnished by the Company is not such a necessity. The Company is the result of a consolidation of many other companies, a large number of which were competitive. Its lines are built without reference to present public needs, but they have been valued at 1924 reproduction new figures. There are cities, comparable to Baltimore, which do not have surface electric cars at all,—London, for example. And if through some catastrophe, the Company's plant in Baltimore were destroyed, who would now argue that it would be duplicated? The demand for transportation would remain just as great as it now is, but there would be no demand, i. e., no necessity, for reproducing the particular form of transportation now furnished by the Company. The fallacy in the argument of our opponents lies in their claim that it is the *service* of the *Company* which is a necessity, whereas the real and only necessity, is the necessity for transportation. And the public demand is for transportation by automobile and not by street car. The evidence of the truth of this statement is plain for every one to see. No new electric street railways are being built. The industry, once prosperous and expanding, is now in financial straits and is declining. This condition, the subject of general comment in the street railway world, is not local, but universal. It is idle to seek to make a scape-goat out of the public service commissions of the entire country for this condition. Other public utilities, likewise subject to commission regulation, are at this moment enjoying the greatest expansion and prosperity in history. The population of Baltimore is increasing, there is a greater and greater demand for transportation,—but not for transportation by electric

street cars. Bus operation has been substituted for street cars in Maryland cities while this case was pending.

Now the Company has a complete monopoly on transportation within its own field. No other electric street railway company could invade this city as a competitor. No other company, of course, would desire to do so. If, however, the Company did not have a monopoly and if the field of public transportation for hire were open and free, unquestionably the public demand for transportation by automobile would be promptly met. The essence of the Company's case, therefore, is nothing more than a demand to be protected in its monopoly. It has built up an extensive property adapted to conditions which have completely changed. If it were a private enterprise, not protected against competition in the same line of business, it could have made no effort to force the public to take its product. Natural economic forces would soon have compelled it to transform its business or go out of business.

What seems to be a public demand for the Company's service, turns out to be only the effect of its monopoly. The public must have transportation, the Company's monopoly compels them to take what it has to sell. They cannot set up a competing bus service. The claimed necessity of the street car service, therefore, is an artificial necessity and not the natural result of the operation of economic laws. The *cost* of the service to a Company so situated is no standard by which to measure the *value* of that service to the public.

Our opponents further argue that a ten cent flat fare would not be beyond the limit of economic productivity, —in words more homely, but not less expressive, would

not be more than the traffic would bear. That there is such a limit cannot, of course, be denied. No assumed necessities of the Company as to rate of return on property, increased costs or what not, could justify a charge of say, twenty-five cents for a car ride. The Company itself recognized that 2 per cent. of its passengers would cease riding in 1928, if it was allowed to put into effect a ten cent fare. This would mean, roughly, a loss of more than 4,000,000 revenue passengers. They would hardly stop riding from choice, but rather from necessity,—a necessity forced on them by the Company. It was claimed that the loss of revenue passengers would not exceed this 2 per cent. and that the increased fare would result in an increased return to the Company. In support of this contention the Company argued that in the past increases in the Company's fares had not been followed by decreases in revenue passengers or passenger revenue and that, therefore, an increase from a fare of eight cents, with two tokens for fifteen cents, to ten cents flat would not have that effect. Now in 1927 the decline in passengers was more than 3 per cent. over 1926 and, there being no change in the rate of fare in 1927, the Company attributed the loss wholly to the competition of the private automobile. It predicted a loss for 1928 of 5 per cent. and attributed 3 per cent. of this loss to the automobile and 2 per cent. to the increase in fare. This distribution of the percentage of loss between these two factors, as well as the total percentage, was at best but a guess. No consideration was given by the Company to the fact that the increase proposed by it, was an increase added to an already increased fare, that is, an increase from eight cents flat, two tokens for fifteen cents, to a flat ten cent fare. It is the last straw that breaks the camel's back. When it is remembered that the competition of the automobile is increasing, and that the public

prefer that method of transportation, and would have it if they could get it, it is submitted that such an increase as the Company contends for would prove more than the traffic would bear. Loss of passengers and drastic decline in revenue under the fares fixed by the Commission have demonstrated that fact.

Value of service must be measured by an objective standard,—not by the standard of cost to the Company, which may be higher or lower than the value of the service, or by that of the paying power of the public, which is more appropriate as a tax measure.

There is no mathematical formula for rate-making, or for any factor involved in it. The factors principally involved are valuation, rate of return, and value of service. As to none of them is there a mathematical equation that will yield the correct result.

Courts and Commissions in decided cases, reported in Public Utilities Reports, Annotated, however, have recognized that there are certain objective standards from which service value can be determined. One is, rates for similar service generally prevalent elsewhere. Another is, the decisions of courts and commissions determining the value of such service. A third is, the effect of the fare, not on revenue, but on riding, which indicates the instinctive reaction of the public to the rate. A fourth is, the relation of the fare to the cost of living and the prices of other commodities.

The highest generally prevalent level of street railway fare is a token charge of 8⅓ cents (R. 1511). It has been seen that commissions have found that charge to be the limit of present service value, and that courts and commissions have found the ten cent fare to be above it.

It has been seen that the increase in cost of living since 1913 would justify a fare equal to, and not one in excess of, that fixed by the Commission, and that this fact was established by Company testimony and exhibits.

The effect of the fare on riding is as nearly a perfect index as can be found of its fairness to the public. If large numbers of persons curtail riding, and others cease to ride at all, because of an increase in fare, strong evidence is thereby afforded that the worth of service has been reached or exceeded.

In this rspect, it should be noted that while the president of the Company states emphatically that in the past, fare increases have not resulted in decreased riding, he concedes than a ten cent fare will result, in and of itself, and independently of the effect of automobile competition, in a loss of at least two per cent. of passengers carried. This means a minimum loss of 4,000,000 rides a year. No more graphic evidence could be afforded that the value of the service to the riding public would be exceeded by the proposed fare, unless it be the actual and far heavier passenger losses under the fares fixed by the Commission.

The Circuit Court No. 2 of Baltimore City disregarded the test of determining present street railway service value with reference to increase in the cost of living, on the ground of increases in wages, to a still greater extent, since 1913. But this confuses two standards, and introduces the irrelevant issue of the paying power of the public. Were this the determining issue, there would be no need for, nor efficacy in, regulation. It was primarily because the public had not equal bargaining position with the utility that regulatory bodies were created. The test afforded by comparison of changes in the cost

of living, *based on an exhibit introduced by the Company,* (R. 1460), affords an objective indication of the worth of street car service. Obviously, the whole cost of living figure, and every component figure in it, could be increased by resort to the increased earnings basis. But the prices of other commodities, sold under competitive conditions, have not been increased to meet the increased wage level of labor. Why should the car fare, merely because the industry involved is subject to regulation, be increased because the wages of some laborers have exceeded its persistent rise?

V.

The Action of the Commission in Abolishing the Second Fare on the Company's Halethorpe Line Was Based on Substantial Evidence and Was Lawful. In a Case Where, as Here, the Question is as to the Reasonableness of an Entire Schedule of Rates Particular Rates on Particular Lines Are Immaterial if the Schedule as a Whole is Reasonable.

The question is not whether the former establishment of the City Line as the limit of single fare zones, by the Commission, was reasonable; but whether the Commission could, in the exercise of reasonable discretion, or must, under the law, order the extension of the single fare zone to a point beyond the City Line, but located closer to the center of the City than other points enjoying the one-fare privilege.

Actually, the City Line standard was never entirely observed. Exceptions were made, with the acquiescence of the Company, and to meet the varying demands of particular situations.

Art. 23, Sec. 365 of Vol. I of Bagby's Annotated Code of Maryland forbids any common carrier to "give any undue or unreasonable preference or advantage * * * to any locality * * * or subject any * * * locality * * * to any prejudice or disadvantage in any respect whatsoever."

The situation of Halethorpe is as follows:

The Company has twelve lines extending to and into the suburbs of Baltimore. The Halethorpe line is the shortest of them all. The first fare zone of three of the lines is just slightly shorter than the total two fare zone of the Halethorpe line and materially larger than its first fare zone. The first fare zone of the other eight lines is longer than the whole Halethorpe line. The first fare zone of five of the latter eight lines extends a substantial distance beyod the City Line. Four of the said eight lines have no second zone whatever, and three of these extend beyond the City limits.

The Court of Appeals said (R., pp. 1652-1653):

"The Commission found as a matter of fact that 'the total distance from the center of the City that may be travelled on the Halethorpe line is a fraction more than five miles, while the single fare zones on nine other lines extending into the suburbs are longer than the two zones to Halethorpe. As pointed out by counsel, the first fare zones of six of these nine lines extend a substantial distance beyond the Baltimore City limits. Five of them have no second fare zones whatever'. That finding was based upon undisputed evidence, and in our judgment afforded a substantial basis for the action of the Commission in including the entire Halethorpe line within a single fare zone, and we cannot say that it was either unlawful or unreasonable, and we will not

therefore disturb that part of its order which deals with that question. N. C. Ry. v. P. S. Com. 122 Md. 355."

In *Portland Railway, Light and Power Company* vs. *Railroad Commission of Oregon* (1913), 229 U. S. 397, this Court upheld the action of the Oregon Commission in removing a discrimination against a suburb of Portland on a two-fare zone line, where similarly circumstanced suburbs farther from the center of the City enjoyed a one-fare privilege.

In *Puget Sound Traction, Light and Power Co.* v. *Reynolds* (1917), 244 U. S. 574, 580, 581, this Court said:

> "But we cannot accede to the suggestion that the question whether the Commission's order is confiscatory or otherwise arbitrary within the inhibition of the 14th Amendment is to be determined with reference alone to the Alki, the Fauntleroy or the Ballard Beach lines. These are and long have been operated by plaintiff as parts of a system comprising 200 miles of tracks. * * * It was not and is not contended that the system earnings are unremunerative.
>
> "'* * * the Company cannot claim the right to earn a net profit from every mile, section, or other part into which the road might be divided, nor attack as unjust a regulation which fixed a rate at which some such part would be unremunerative.'"

While there is some reference in the Record to the fact that the operation of the Halethorpe portion of Line No. 3 is unprofitable, there is no suggestion made that even the entire line does not pay its way, and it has been shown elsewhere that the return on the system as a whole is not unreasonable. A street railway or other utility can not expect a full or even a fair return on every isolated unit

of its property. It is sufficient if its return on the property as a whole be fair. See *Spurr, Guiding Principles of Public Service Regulation*, Vol. 3, p. 207, *et seq.*

It may be, and probably is, true, that refusal of the Commission to remove the discrimination existing against Halethorpe, would have been 'unlawful and unreasonable.'' Certainly, it was not unlawful for it to end a preference discriminatory in fact and apparently also in law.

VI.

The Maryland Statutes, as Construed and Applied by the Court of Appeals, Did Not Deprive the Company of a Judicial Review of the Question of Confiscation.

By its sixth assignment of error the Company raises the question as to whether the Maryland statutes deprive the Company of a judicial review of the action of the Commission. *Ohio Valley Water Co.* v. *Ben Avon Borough*, 253 U. S. 287. This involves two questions, (1) the provisions of the statutes, and (2) the construction put upon the statutes by the Court of Appeals.

(1) The provisons for court review of commission rders are contained in Bagby's Annotated Code of Maryland, Vol. 1, Art. 23, Secs. 404 to 410, incl. They are copied in the Appendix to this Brief, pages 157-160. Briefly summarized they provide as follows:

Any corporation or person in interest may commence an action in any court of Baltimore City of appropriate jurisdiction against the Commission to vacate and set aside any order on the ground that it is unlawful or unreasonable. The Commission is required to answer, whereupon the action shall be at issue. Recourse to the

courts must be taken within sixty days after rendition of any order complained of, and this right shall determine absolutely at the end of such sixty days after the entry of such order. No injunction shall issue suspending or staying any order except upon application to one of the judges of the Supreme Bench of Baltimore City, or to the Circuit Court of one of the counties, and upon notice to the Commission and after hearing (Sec. 404). Provision is made for the introduction of new evidence before the court by the *plaintiff* and if this is found to be different from that offered upon the hearing before the Commission or additional thereto, the court, unless the parties stipulate in writing to the contrary, shall transmit a copy of such evidence to the Commission and stay further procedings for fifteen days from the date of such transmission. Upon the receipt of such evidence the Commission shall consider the same and may alter or rescind its order and shall report its action thereon to the Court. If the Commission rescinds its order the action in court shall be dismissed. If it alters or modifies the same, such altered or modified order shall take the place of the original order and judgment shall be rendered as though the order had been made by the Commission in the first instance (Sec. 405). A certified transcript of all the papers and proceedings, including the evidence in any case before the Commission, shall be filed by the Commission in such action and shall be evidence in like manner as the original transcript (Sec. 406). Either party to such action within twenty days after service of copy of the order of the court may appeal to the Court of Appeals of Maryland (Sec. 407). In all such trials, actions and proceedings "the burden of prof shall be upon the party adverse to said commission or seeking to set aside any determination, requirement, direction or order of said commission, to show by clear and satisfac-

tory evidence that the determination, requirement, direction or order of the commission complained of is unreasonable or unlawful, as the case may be" (Sec. 408).

The question of the validity of the time limitation contained in Sec. 404 does not arise in this case, because the Company filed both its original and its supplemental bills within the time limited by the Section. Compare *Keller* v. *Potomac Electric Power Co.*, 261 U. S. 428, 445, where this Court said:

> "Some question has been made as to the validity of paragraph 65, which forbids all recourse to courts to set aside, vacate and amend the orders of the Commission after 120 days, and of paragraph 69, which puts the burden upon the party adverse to the Commission to show by clear and satisfactory evidence the inadequacy, unreasonableness or unlawfulness of the order complained of. It is suggested that this deprives the public utility of its constitutional right to have the independent judgment of a court on the question of the confiscatory character of an order and so brings the whole law within the inhibition of the case of *Ohio Valley Water Co.* v. *Ben Avon Borough*, 253 U. S. 287. It is enough to say that even if paragraphs 65 and 69 were invalid, the whole act would not fail in view of paragraph 92 already referred to. *It will be time enough to consider the validity of those sections when it is sought to apply them to bar or limit an independent judicial proceeding raising the question whether a rate or other requirement of the Commission is confiscatory.*" (Italics supplied.)

It is clear that Sec. 404 contemplates a proceeding in court by way of bill in equity for an injunction. The proceeding may be brought in any court of Baltimore City of appropriate jurisdiction which may be adopted for the purpose. Among these courts are the Circuit Court and the Circuit Court No. 2 of Baltimore City (in the latter

of which the Company filed its bill in this case), both of which Courts are courts having general equitable jurisdiction. Further, Sec. 404 refers to the action or suit as one to vacate or enjoin enforcement of the Commission's orders and regulates the procedure on application for an injunction. The uniform practice in Maryland has been to proceed by way of a bill in equity for an injunction. *Public Service Commission* v. *Northern Central R. R.*, 122 Md. 355; *Penn. R. R. Co.* v. *Public Service Commission*, 126 Md. 59; *Havre de Grace Bridge Co.* v. *Public Service Commission*, 132 Md. 16.

The statutory provisions quoted, in one respect at least, enlarge the powers of the courts. "Any person in interest being dissatisfied with any order of the Commission", may bring his suit against the Commission. This has been construed to permit persons, who have no such property rights as would entitle them to invoke the inherent equity jurisdiction of the court, to file a bill in equity to enjoin an order of the Commission. *Benson* v. *Public Service Commission*, 141 Md. 398; *Miles* v. *Public Service Commission*, 151 Md. 337. It has never been held in Maryland that these statutes cut down the inherent chancery jurisdiction of the equity courts of the state.

New evidence may be introduced in court, but only by the party complaining of an order of the Commission. *Public Service Commission* v. *Byron*, 153 Md. 464, 472. The requirement that if such new evidence is introduced, it shall be transmitted to the Commission for consideration, is no more than a statutory recognition of the comity which should be observed by a court in passing on the validity of a legislative act.

These statutes confer no revisory legislative powers upon the Maryland courts. In *Public Service Commis-*

sion v. *Northern Central Rwy.*, 122 Md. 355, 388, it was said: "It must be observed that the power of the Commission to fix reasonable rates, etc., is legislative—*Gregg* v. *Laird, supra,*—and that the functions of the Court in reviewing the actions of the Commission are distinctly judicial, and are exercised only for the purpose of determining whether such action of the Commission is unreasonable or unlawful". See also *Havre de Grace Bridge Co.* v. *Public Service Commission*, 132 Md. 16, 24.

The construction put on the statute (Section 408) as to burden of proof by the Court of Appeals does not result in a denial of due process of law. In *Havre de Grace Bridge Co. vs. Public Service Commission*, 132 Md. 16, 24, this provision was referred to. The court, however, *weighed* the conflicting evidence and *reversed* the order of the Commission. See also *Public Service Commission vs. Byron, supra.* In the latter case the Court of Appeals cited and followed the decision of this Court in *Interstate Commerce Commission vs. Union Pacific Railway Co.*, 222 U. S. 541.

It will thus be seen that the Maryland statutes in themselves and as construed by the decisions of the Court of Appeals (apart from the decision now under review) present a situation strikingly like that dealt with by this Court in *Lehigh Valley Railroad Co. vs. Board of Public Utility Commissioners*, 278 U. S. 24. In that case an attack was made on the statute providing for the elimination of grade crossings by the Board of Public Utilities of New Jersey on the ground that it made no provision for appeal from the decision of the Board to a court with jurisdiction judicially to determine independently, on the law and facts, whether the property of the Company was being confiscated. This Court distinguished the *Ben Avon* case on the ground that the New Jersey legislation,

as construed by the State courts, provided an adequate judicial review either by way of certiorari or by resort to the court of chancery.

(2) It remains to consider whether the Court of Appeals in the instant case departed from the doctrine hitherto followed. The opinion of the Court of Appeals (R., pp. 1627-1630) contains a general discussion as to the extent to which the court will go in reviewing the conclusions and decisions of the Commission. Considering the opinion in the *Ben Avon* case, the Court of Appeals said that the requirement of that case to the effect that in confiscation cases provision must be made for submitting that question to some judicial tribunal authorized to adjudicate it upon its own independent judgment as to both law and facts, was "consistent with the theory that in reviewing the decision of an administrative agency the Court would review the facts as in an equity case". Thereupon the court goes on to say that it does not so construe the *Ben Avon* case. We submit that in so holding the Court of Appeals was in complete accord with the doctrine of this Court. Adequate judicial review does not require that the courts of a state shall have power *to make the same order that the commission should have made.* This would be conferring legislative or administrative jurisdiction on the courts. This Court, in *Keller* vs. *Potomac Electric Power Company,* 261 U. S. 428, held that such power could not constitutionally be conferred upon the Supreme Court of the United States. It was said (page 443-444):

> "The court proceedings to review the orders of the Commission, authorized by paragraph 64, are expressly required to conform to equity procedure. In that procedure an appeal brings up the whole record and the appellate court is authorized to review the evidence and make such order or decree as

the court of first instance ought to have made, giving proper weight to the findings on disputed issues of fact which should be accorded to a tribunal which heard the witnesses. This court is, therefore, given jurisdiction to review the entire record, and to make the order or decree which the commission and the District courts should have made.

Such legislative or administrative jurisdiction it is well settled cannot be conferred on this court either directly or by appeal."

Now the Supreme Court of the United States of course constantly passes on questions of confiscation. But if jurisdiction cannot be conferred upon it "to review the evidence and make such order or decree as the court of first instance ought to have made, giving proper weight to the findings on disputed issues of fact which should be accorded to a tribunal which heard the witnesses", it must follow that the *Ben Avon* case is not subject to the construction that it requires the states to provide a judicial review of commission orders according to equity procedure. This was the position of the Court of Appeals in the case at bar.

Concluding this portion of its opinion the Court of Appeals said: (R., p. 1630)

"* * * and we feel that in dealing with the constitutional questions involved in confiscation *some weight* must be given to the statute which places upon the person attacking the decision of the commission the burden of establishing its unlawful or unreasonable character by 'clear and satisfactory proof' ". (Italics supplied.)

Thus the final conclusion of the Court of Appeals was that there was nothing in the *Ben Avon* case which invalidated a statutory provision putting the burden of

proof on the party attacking an order of a commission. In this also the Court of Appeals was clearly right. The passage it cites from one of its own former decisions, *West vs. Byron*, (*Public Service Commission vs. Byron*, 153 Md. 464) to the effect that "the first rule is the order will not be disturbed except upon clear and satisfactory evidence that it is unreasonable or unlawful. This is a legislative mandate which is reenforced by the fact that the Commission is a tribunal erected by law, informed by experience, and assisted by a trained corp of subordinates",—is the doctrine laid down by this Court. *Darnell vs. Edwards*, 244 U. S. 564, 569.

Coming now to the manner in which the Court of Appeals dealt with the findings of the Commission, it is plain that the Court did in fact review the testimony taken before the Commission. It is true it gave effect to the statutory presumption in favor of the commission's findings. But it did not hold that it was without power to make its own independent determination on the evidence. This is made manifest by the fact already noted in this brief in another connection that the difference between the majority and the minority of the court consisted in differences concerning the *weight* of the testimony. Judge Parke, in his dissenting opinion, R., p. 1659, held that the testimony for the Company was clear that a return of 6.26 per cent was not fair, though admitting that evidence to the contrary was entitled to *some weight*. The majority of the court, however, held, on the identical question, that the testimony which convinced Judge Parke, though it tended to support the Company's contention, did not outweigh other testimony in the record. Our construction of the extent of review actually afforded by the court is still further confirmed by the concurring opinion of Judge Adkins. (R., pp. 1653-1654) He said:

"Nor, as I understand, was it intended to indicate that a finding of the Commission as to the proper amount to be allowed annually for accruing depreciation would be conclusive and unreviewable, even though the commission should base that finding on present value rather than the original cost, if the amount so found should be manifestly unreasonable on the whole evidence. Here, the question of confiscation is involved, and in any hearing by a Court on such a question it must be satisfied, not necessarily that it would have reached the same conclusion on the evidence, but, at least, that the conclusion reached by the commission was fairly deducible from the evidence. The opinion clearly indicates the kind of evidence on which a finding as to depreciation should be based."

CONCLUSION.

It is respectfully submitted that the decree in No. 55 should be affirmed and that the decree in No. 64 should be reversed.

Respectfully submitted,

RAYMOND S. WILLIAMS,

THOMAS J. TINGLEY,

JOHN H. LEWIN,

Counsel for Public Service Commission of Maryland.

APPENDIX TO BRIEF

SCHEDULE A

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Comparative Consolidated General Balance Sheet—Years Ended December 31, 1923, 1924, 1925, and 1926, and at August 31, 1927, Condensed from People's Counsel Exhibit No. 52

ASSETS	December 31, 1923	December 31, 1924	December 31, 1925	December 31, 1926	August 31, 1927
Road and Equipment	$88,571,841.34	$90,396,714.05	$91,085,815.44	$90,394,877.14	$90,575,521.66
Sinking and Depreciation Funds	260,492.16	322,040.82	376,547.45	447,244.24	461,544.06
Investments in Affiliated Companies	656,462.27	609,756.36	814,571.61	817,581.85	805,262.91
Other Investments	2,665.42	2,430.00	1,030.00	1,000.00	1,000.00
Current Assets	1,615,247.51	2,108,670.52	1,772,302.74	1,919,014.91	1,855,478.06
Deferred Assets	204,432.54	181,513.65	214,493.09	151,562.87	172,111.70
Unadjusted Debits	899,940.63	1,363,131.18	1,773,761.40	2,823,210.68	2,990,745.27
Deposits in Lieu of Mortgaged Property Sold	35,312.32	55,072.59			
Total Assets	$92,246,394.19	$95,039,329.17	$96,038,521.73	$96,554,491.69	$96,861,663.66
LIABILITIES AND CAPITAL					
Capital Stock:					
Parent Company	$20,461,200.00	$20,461,200.00	$20,461,200.00	$20,461,200.00	$20,461,200.00
Subsidiaries	402,000.00	250,976.84	250,976.84	250,976.84	250,976.84
Grants in Aid in Construction	90,259.45	90,259.45	90,259.45	90,259.45	118,471.10
Funded Debt:					
Mortgage Bonds	43,497,000.00	47,304,000.00	47,101,500.00	46,892,500.00	46,806,500.00
Income Bonds	13,977,000.00	13,977,000.00	13,977,000.00	13,977,000.00	13,977,000.00
Miscellaneous	6,392,700.00	6,392,700.00	6,392,700.00	6,392,700.00	6,392,700.00
Non Negotiable Debt to Affiliated Co.			200,000.00	200,000.00	200,000.00
Current Liabilities	2,405,769.50	1,424,441.04	2,318,493.18	2,429,862.28	2,997,727.63
Deferred Liabilities				264,485.59	618,291.49
Unadjusted Credits*	2,854,478.75	2,567,154.32	2,650,139.28	2,928,894.13	2,536,450.42
Surplus and Surplus Reserves	2,165,986.49	2,571,597.52	2,596,252.98	2,666,613.40	2,502,346.18
Total Credits	92,246,394.19	95,039,329.17	96,038,521.73	96,554,491.69	96,861,663.66
*Includes Reserves for Depreciation of	$1,187,374.92	$1,195,693.32	$1,303,799.05	$1,520,541.26	$1,413,792.79

SCHEDULE B

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Comparison of Estimated Return of 9¢ Straight Fare, 3 Tokens for 25¢, with 10¢ Straight Fare, 4 Tokens for 35¢. The Latter Fare Became Effective December 1 1928, and is still effective

	(1) Estimated Return for 1928 at 9¢ or 3 for 25¢ fare, from page 56 of Commission's Order 12639, dated February 10, 1928		(2) Estimated Return at 10¢ or 4 tokens for 35¢, with depreciation based upon "Value"	(3) Estimated Return at 10¢ or 4 tokens for 35¢, with depreciation at 5% of Operating Revenue	(4) Estimated Return at 10¢ Straight Fare with depreciation based upon "Value", from Co. Exhibit 24 (R. 1428)	(5) Estimated Return at 10¢ Straight Fare with depreciation based upon "Value" as determined by Commission. Other figures taken from Company Exhibit 24 (R. 1428)	(6) Estimated Return at 10¢ Straight Fare with depreciation based upon 5% of Revenue. Other figures taken from Company Exhibit 24 (R. 1428)
	No. of Passengers	Revenues					
Cash Fare	$ 7,180,730	$ 646,266	$ 718,073	$ 718,073			
Token Fare	191,753,540	15,979,461	16,778,435	16,778,435			
Total Full Fares	198,934,270	16,625,727	17,496,508	17,496,508			
½ Fares, County Zone, School Fares etc.	16,463,000	810,150	810,150	810,150			
	$215,397,270	$17,435,877	$18,306,658	$18,306,658	$20,156,000	$20,156,000	$20,156,000
Other Revenue		235,000	235,000	235,000	235,000	235,000	235,000
Total Operating Revenue		$17,670,877	$18,541,658	$18,541,658	$20,391,000	$20,391,000	$20,391,000
Operating Expenses		$10,303,944	$10,303,944	$10,303,944	$10,394,000	$10,394,000	$10,394,000
Depreciation		883,544	1,687,068	927,083	2,200,000	1,687,068	1,019,550
Taxes:							
Property, etc.		487,110	487,110	487,110	542,000	542,000	542,000
Park Tax (6.7% of Total Fare Revenue)		1,168,204	1,226,546	1,226,546	1,350,500	1,350,500	1,350,500
Income Tax		138,469	138,469	230,737	355,000	377,212	457,314
Total Operating Expenses		$12,981,271	$13,843,137	$13,175,420	$14,841,500	$14,350,780	$13,763,364
Operating Income		$ 4,689,606	$ 4,698,521	$ 5,366,238	$ 5,549,500	$ 6,040,220	$ 6,627,636
Non-Operating Income		171,000	171,000	171,000	171,000	171,000	171,000
Gross Income		4,860,606	$ 4,869,521	$ 5,537,238	$ 5,720,500	$ 6,211,220	$ 6,798,636
Deductions from Gross Income		3,445,000	3,445,000	3,445,000	3,445,000	3,445,000	3,445,000
Net Income		$ 1,415,606	$ 1,424,521	$ 2,092,238	$ 2,275,500	$ 2,766,220	$ 3,353,636
Percent of Return—base of $75,000,000		6.26%	6.26%	7.155%	7.399%	8.053%	8.836%

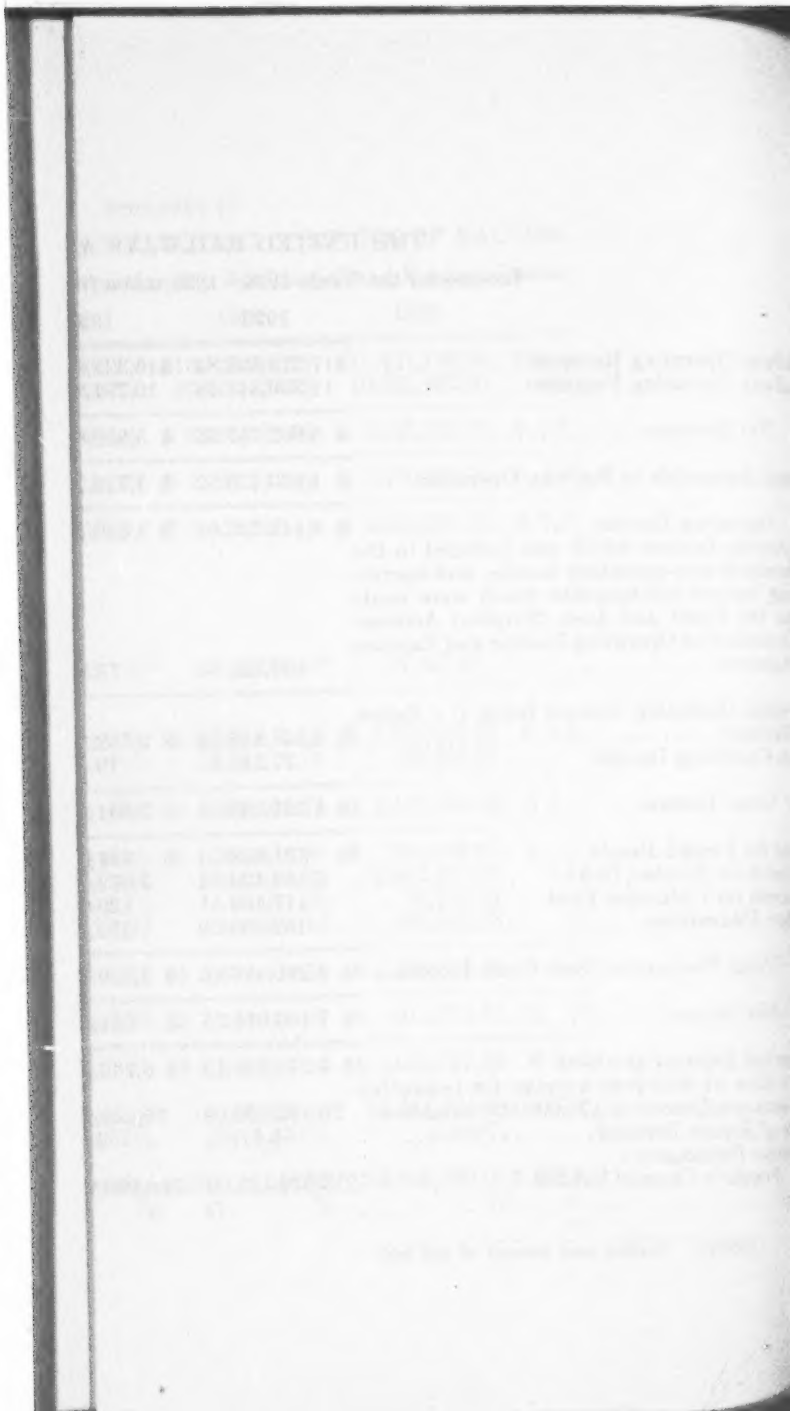
SCHEDULE C

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Income for the Years 1920—1926 taken from Company Exhibit 6-C and People's Counsel Exhibit 12

	1920	1921	1922	1923	1924	1925	1926
Railway Operating Revenue	$17,313,598.84	$16,332,865.43	$16,122,592.02	$16,461,798.86	$16,453,254.31	$16,621,220.20	$16,715,709.07
Railway Operating Expenses	11,330,841.48	10,781,974.38	10,429,122.02	10,622,402.60	10,637,925.63	10,776,811.37	10,790,804.97
Net Revenue	$ 5,982,757.36	$ 5,550,891.05	$ 5,693,470.00	$ 5,839,396.26	$ 5,815,328.68	$ 5,844,408.83	$ 5,924,904.10
Taxes Assignable to Railway Operation	$ 1,839,420.92	$ 1,710,109.29	$ 1,740,512.49	$ 1,800,335.31	$ 1,656,073.68	$ 1,632,386.08	$ 1,672,316.22
Operating Income	$ 4,143,336.44	$ 3,840,781.76	$ 3,952,957.51	$ 4,039,060.95	$ 4,159,255.00	$ 4,212,022.75	$ 4,252,587.88
Operating Income which was included in the books as non-operating income, and operating income adjustments which were made to the Profit and Loss (Surplus) Account instead of to Operating Income and Expense Accounts	103,508.66	*78,617.86**	*4,739.99**	44,567.00	*34,674.42**	67,037.34	61,428.03
Revised Operating Income being the *Return Received*	$ 4,246,845.10	$ 3,762,163.90	$ 3,948,217.52	$ 4,083,627.95	$ 4,124,580.58	$ 4,279,060.09	$ 4,314,015.91
Non-Operating Income	77,543.51	79,450.97	110,818.19	83,708.87	67,745.02	78,125.77	99,658.47
Gross Income	$ 4,324,388.61	$ 3,841,614.87	$ 4,059,035.71	$ 4,167,336.82	$ 4,192,325.60	$ 4,357,185.86	$ 4,413,674.38
Rent for Leased Roads	$ 361,038.00	$ 361,038.00	$ 361,038.00	$ 361,038.00	$ 529,360.11	$ 551,013.92	$ 551,392.50
Interest on Funded Debt	2,589,420.32	2,672,489.17	2,696,131.25	2,652,495.00	2,652,495.00	2,652,495.00	2,652,495.00
Interest on Unfunded Debt	117,489.54	120,997.73	96,087.37	70,745.51	30,500.51	33,560.58	64,544.07
Other Deductions	152,530.00	155,205.57	156,678.12	138,544.88	122,906.97	115,158.71	113,670.71
Total Deductions from Gross Income	$ 3,220,477.86	$ 3,309,730.47	$ 3,309,934.74	$ 3,222,823.39	$ 3,335,262.59	$ 3,352,228.21	$ 3,382,102.28
Net Income	$ 1,103,910.75	$ 531,884.40	$ 749,100.97	$ 944,513.43	$ 857,063.01	$ 1,004,957.65	$ 1,031,572.10
Returned Received as above	$ 4,246,845.10	$ 3,762,163.90	$ 3,948,217.52	$ 4,083,627.95	$ 4,124,580.58	$ 4,279,060.09	$ 4,314,015.91
Rate Base at mid-year average for respective years as adjusted on $75,000,000 valuation	76,118,202.00	75,436,209.00	74,067,420.00	74,674,154.00	75,416,257.00	75,989,562.00	76,075,940.00
Rate of Return Received	5.579%	4.987%	5.331%	5.469%	5.469%	5.631%	5.671%
Revenue Passengers—							
People's Counsel Exhibit 3	253,934,129.00	238,090,980.00	233,732,146.00	238,658,380.00	228,423,774.00	224,235,527.00	225,255,633.00
Fare	7¢	7¢	7¢	7¢	5/6/24—8¢ or 2 for 15¢	8¢—2 for 15¢	8¢—2 for 15¢

NOTE: *Italics used instead of red ink.



SCHEDULE D

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Showing Rates of Fare Necessary to Yield a Return Equal to 2½ Times the Fixed Charges, Based Upon Company Exhibit No. 24

Fixed charges per Company Exhibit No. 24	$ 3,445,000
2½ times thereof	8,612,500
Amount of Total Revenue necessary to yield 2½ times the fixed charges	$23,454,000
Less "Other Revenue"	235,000
Amount of Passenger Revenue necessary to yield a return of 2½ times the fixed charges	$23,219,000

ALLOCATION OF PASSENGER REVENUE

The Passenger Revenue is Allocated Below in the Proportions or Ratios Shown in the Footnote to Company Exhibit No. 24

	Revenue Passengers	Passenger Revenue	Rate of Fare
1st County	$ 2,202,355	$ 152,176	6.9 ¢
2nd County	255,222	20,549	8.05¢
3rd County	42,730	3,413	7.98¢
Beth. Steel	1,275,250	102,791	8.06¢
Miscellaneous	7,592	302	.....
Adult	6,986,786	804,817	11.52¢
Adult	186,572,522	21,492,691	11.52¢
Half Fare	7,675,274	442,067	5.75¢
School	3,475,819	200,194	5.76¢
	$208,493,550	$23,219,000	

Estimated return of above on a value of $75,000,000. Operating Expenses taken from Column 2 of Schedule C, with adjustment for income taxes 11.709%

SCHEDULE E

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE

Comparison of Prices—Taken from Company Exhibit No. 29

1913=100

	1920	1927	Percent Increase	Percent Decrease
All commodities wholesale U. S. B. L...	226	148		34.51
Cost of Living in Baltimore U. S. B. L...	198	175		1.16
Operating Expenses per C. M.....	208	212	1.92	
Platform Wages.....	208	224	7.69	
Union Labor.....	189	240	26.98	
Average Fare.....	139	150	7.91	

Comparison between Cost of Living and Fares Taken from People's Counsel Exhibit No. 23

1913 to 1927

Year	Wholesale all Commodities U.S.B.L.S.	Fare U. Ry. & E. Co.		Average Fare Per Revenue Passenger Amount	Index
1913.....	100		5¢	$.04867	100
1917.....	177		5¢	.04867	100
1918.....	194	10/1/18	6¢	.05124	105
1919.....	206	10/1/19	7¢ 2 for 13	.06013	124
1920.....	226	1/1/20	7¢	.06753	139
1921.....	147		7¢	.06782	139
1922.....	149		7¢	.06807	140
1923.....	154		7¢	.06800	140
1924.....	150	5/26/24	8¢, 2 for 15	.0719	147
1925.....	159		8¢, 2 for 15	.07316	150
1926.....	151		8¢, 2 for 15	.07320	150
1927 (Estimated).....	146		8¢, 2 for 15	.07320	150
1928.....	...	Proposed 10¢		.0968	199

SCHEDULE F

RECORD OF PRICES OF CAPITAL, TAKEN FROM PAGE XIX OF MOODY'S MANUAL OF PUBLIC UTILITIES FOR 1929

Year	Municipal Bonds	Railroad Bonds	Pub. Util. Bonds	Indus. Bonds	Indus. Pfds.	Foreign Govt's.	Price o Capita
1903	3.31%	4.10%	4.63%	5.69%	7.27%	.....	5.00%
1904	3.35	4.05	4.60	5.81	7.33	.....	5.03
1905	3.40	3.91	4.43	5.19	6.34	.....	4.65
1906	3.60	4.01	4.56	5.18	6.32	.....	4.73
1907	3.90	4.30	4.91	5.76	6.97	.....	5.17
1908	3.82	4.35	5.11	5.90	7.09	.....	5.25
1909	3.90	4.08	4.71	5.16	6.13	4.91%	4.79
1910	4.00	4.21	4.79	5.25	6.23	5.01	4.89
1911	4.06	4.23	4.77	5.17	6.25	5.01	4.89
1912	4.15	4.26	4.80	5.18	6.16	5.03	4.91
1913	4.30	4.41	4.90	5.35	6.42	5.19	5.05
1914	4.28	4.92	5.01	5.96	6.88	5.54	5.23
1915	5.35	4.89	4.81	5.57	6.83	5.42	5.27
1916	3.97	4.75	5.46	5.26	6.48	5.31	5.28
1917	4.22	5.10	5.40	5.97	6.98	5.66	5.43
1918	4.54	5.79	5.66	6.46	7.19	6.07	5.74
1919	4.62	5.96	6.30	6.57	7.25	6.32	6.01
1920	5.20	6.97	7.61	7.70	7.80	7.44	6.04
1921, 1st half	5.40	7.07	7.85	7.82	7.84	7.44	6.68
1921, 2nd half	5.61	6.24	7.36	7.96	7.92	7.73	6.85
1922, 1st quarter	4.71	5.68	6.92	7.17	7.55	6.97	6.79
1922, 2nd quarter	4.41	5.47	6.20	6.91	7.48	6.61	6.45
1922, 3rd quarter	4.19	5.38	6.38	6.79	7.35	6.72	6.23
1922, 4th quarter	4.12	5.76	6.24	6.41	7.22	7.03	6.12
1923, 1st quarter	4.22	5.63	6.09	6.63	7.19	6.51	6.10
1923, 2nd quarter	4.40	5.81	6.30	6.51	7.38	6.78	6.03
1923, 3rd quarter	4.42	5.58	6.42	6.43	7.40	6.76	6.10
1923, 4th quarter	4.61	5.52	6.32	6.65	7.24	6.68	6.09
1924, 1st quarter	4.39	5.21	6.31	6.55	7.32	6.39	6.08
1924, 2nd quarter	4.29	5.47	6.20	6.68	7.14	6.40	5.98
1924, 3rd quarter	4.24	5.20	6.11	6.30	6.92	6.59	5.86
1924, 4th quarter	4.17	5.00	5.91	6.36	6.99	7.03	5.78
1925, 1st quarter	4.00	5.17	5.77	6.24	7.26	7.18	5.77
1925, 2nd quarter	4.00	5.45	5.70	6.33	7.19	6.81	5.82
1925, 3rd quarter	4.17	5.37	5.38	6.06	6.63	6.68	5.79
1925, 4th quarter	4.30	5.09	5.82	6.11	7.06	7.30	5.82
1926, 1st quarter	4.25	5.13	5.80	5.88	6.76	7.26	5.77
1926, 2nd quarter	4.22	4.83	5.46	6.15	7.25	6.85	5.70
1926, 3rd quarter	4.21	5.11	5.71	5.93	6.96	6.78	5.76
1926, 4th quarter	4.36	5.09	5.51	5.68	6.59	7.04	5.74
1927, 1st quarter	4.25	4.91	5.41	5.70	6.52	6.47	5.60
1927, 2nd quarter	4.06	4.86	5.48	5.75	6.53	6.47	5.51
1927, 3rd quarter	4.11	5.04	5.30	5.93	6.46	6.15	5.50
1927, 4th quarter	3.96	4.60	5.16	5.53	6.37	6.81	5.38
1928, 1st quarter	3.88	4.70	5.25	5.45	6.26	6.28	5.34
1928, 2nd quarter	4.12	4.39	5.23	5.67	5.99	5.56	5.28
1928, 3rd quarter	4.46	...	5.71	6.05	6.00	6.78	5.63
1928, 4th quarter	4.30	4.75	5.35	6.05	6.33	6.68	5.47
1929, 1st quarter	4.51	4.90	5.57	6.12	6.08	6.86	5.61

SCHEDULE G

TABLE III. Weighted and Simple Average Yield at Offering Price of New Public Utility Security Issues

All Types of Securities

Year	All Maturities		Long Term		Short Term		Bonds and Notes	
	Weighted Average Yield	Simple Average Yield	Weighted Average Yield	Simple Average Yield	Weighted Average Yield	Simple Average Yield	Weighted Average Yield	Simple Average Yield
1919	6.55	6.68	6.21	6.25	6.78	7.03	6.54	6.67
1920	7.55	7.64	7.52	7.59	7.59	7.68	7.53	7.62
1921	7.13	7.47	7.11	7.42	7.27	7.66	7.11	7.45
1922	6.06	6.34	6.03	6.32	6.39	6.53	6.03	6.34
1923	6.04	6.31	5.99	6.26	6.73	6.72	6.11	6.29
1924	6.03	6.14	6.04	6.16	5.97	6.04	5.98	6.12
1925	5.58	5.81	5.66	5.83	5.55	5.86	5.56	5.78
1926	5.53	5.72	5.52	5.70	5.77	5.82	5.44	5.66
1927	5.24	5.61	5.25	5.57	5.11	5.77	5.12	5.57

404. Any corporation subject to this sub-title, or any of the provisions of this sub-title, and any person in interest being dissatisfied with any order of the commission, fixing any rate or rates, tolls, charges, schedules, joint rate or rates, or any order fixing any regulations, practices, acts or service, may commence any action in the circuit court for any county, or before any judge of the supreme bench of Baltimore city, in any court of Baltimore city of appropriate jurisdiction which may be adopted for the purpose, against the commission as defendant to vacate and set aside any such order on the ground that the rate or rates, tolls, charges, schedules, joint rate or rates, fixed in such order is unlawful or that any such regulation, practice, act or service fixed in such order is unreasonable, in which action a copy of the complaint shall be served with the summons.

The answer of the commission to the complaint shall be served and filed within twenty days after service of the complaint, whereupon said action shall be at issue and stand ready for trial upon fifteen days' notice to either party.

All such actions shall have precedence over any civil cause of a different nature pending in such court, and the courts shall always be deemed open for the trial thereof, and the same shall be tried and determined as other civil actions.

Every proceeding, action or suit to set aside, vacate or amend any determination or order of the commission, or to enjoin the enforcement thereof or to prevent in any way such order or determination from becoming effective, shall be commenced, and every appeal to the courts or right or recourse to the courts shall be taken or exercised within sixty days after the entry or rendi-

tion of such order or determination, and the right to commence any such action, proceeding or suit, or to take or exercise any such appeal or right of recourse to the courts, shall determine absolutely at the end of such sixty days after such entry or rendition thereof.

No injunction shall issue suspending or staying any order of the commission, except upon application to one of the judges of the supreme bench of Baltimore city, or to the circuit court of one of the counties, and upon notice to the commission and after hearing.

405. If, upon the trial of such action, evidence shall be introduced by the plaintiff which is found by the court to be different from that offered upon the hearing before the commission, or any commissioner, or additional thereto, the court, before proceeding to render judgment, unless the parties to such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission and shall stay further proceedings in said action for fifteen days from the date of such transmission.

Upon the receipt of such evidence the commission shall consider the same and may alter, modify, amend or rescind its order relating to such rate, or rates, tolls, charges, schedules, joint rate or rates, regulations, practice, act or service complained of in said action, and shall report its action thereon to said court within ten days from the receipt of such evidence.

If the commission shall rescind its order complained of, the action shall be dismissed; if it shall alter, modify or amend the same, such altered, modified or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon as though made by the commission in the first instance.

If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order.

406. Before the trial of such action a transcript duly certified by the Secretary of the Commission of all the papers and proceedings, including evidence, in the case before the Commission except such as are omitted by the stipulation in writing of the parties to such action, shall be filed by the Commission in such action and shall be evidence in like manner as the originals transcribed.

407. Either party to said action, within twenty days after service of a copy of the order or judgment of any court of Baltimore city or of the circuit court of any county, may appeal to the court of appeals of Maryland. Where an appeal is taken the cause shall, on the return of the record of the procedings to the court of appeals of Maryland, be immediately placed on the docket of the then pending term of the court of appeals, and shall be assigned and brought to a hearing in the same manner as other causes on the docket.

408. In all trials, actions and procedings arising under the provisions of this sub-title, or growing out of the exercise of the authority and powers granted herein to the commission, the burden of proof shall be upon the party adverse to such commission, or seeking to set aside any determination, requirement, direction or order of said commission, to show by clear and satisfactory evidence that the determination, requirement, direction or order of the commission complained of is unreasonable or unlawful, as the case may be.

49. In all actions and procedings in court arising under this sub-title, all processes shall be served and the

practice and rules of evidence shall be the same as in civil actions, except as otherwise herein provided. Every sheriff or other officer empowered to execute civil processes shall execute any process issued under the provisions of this sub-title, and shall receive such compensation therefor as may be prescribed by law for similar services.

410. No person shall be excused from testifying or from producing books, accounts and papers in any proceeding based upon or growing out of the provisions of this sub-title on the ground or for the reason that the testimony or evidence, documentary or otherwise, required by him may tend to incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for on account of any transaction, matter or thing concerning which he may have testified or produced any documentary evidence; provided, that no person so testifying shall be exempted from prosecution or punishment for perjury in so testifying.

LE COPY

OCT 21 1929

No. 55.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE,
Appellant,
vs.
HAROLD E. WEST, Chairman, and J. FRANK HARPER and STEUART PURCELL, Members, Constituting the Public Service Commission of Maryland,
Appellees.

No. 64.

HAROLD E. WEST, Chairman, and J. FRANK HARPER and STEUART PURCELL, Members, Constituting the Public Service Commission of Maryland,
Appellants,
vs.
THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE,
Appellee.

APPEAL FROM, AND CROSS-APPEAL FROM AND PETITIONS FOR CERTIORARI TO, THE COURT OF APPEALS OF THE STATE OF MARYLAND.

REPLY BRIEF FOR THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE.

CHARLES McHENRY HOWARD,
CHARLES MARKELL,
HENRY H. WATERS,
Counsel for The United Railways and Electric Company of Baltimore.

CONTENTS

PAGE

Introductory 2

I. Value of property..... 2

II. Depreciation allowance 6

III. Rate of return..... 7

IV. Value of service..... 10

CITATIONS.

CASES:

Bluefield Co. vs. Public Service Commission, 262 U. S. 679 8

Consolidated Gas Co. of New York vs. Prendergast, 6 F. (2d) 243..... 7

Havre de Grace Bridge Co. vs. Public Service Commission, 132 Md. 16..... 3

Lincoln Gas Co. vs. Lincoln, 250 U. S. 256..... 7

McCardle vs. Indianapolis Water Co., 272 U. S. 400..7, 9

Miles vs. Public Service Commission, 151 Md. 337.... 3

Missouri ex rel. Southwestern Bell Telephone Co. vs. Public Service Commission, 262 U. S. 276..... 6

Smyth vs. Ames, 169 U. S. 466..... 4

Southwestern Bell Telephone Co. vs. Public Service Commission, 262 U. S. 276..... 6

United States vs. Ludey, 274 U. S. 295..... 6

TEXTS:

Moody's Manual of Investments, Public Utilities, 1929 .....7, 8

STATUTES:

Maryland:

Public Service Commission Law, Section 30 [Annotated Code of 1924, Article 23, sec. 385]..... 4

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

No. 55.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE,
Appellant,

vs.

HAROLD E. WEST, Chairman, and J. FRANK HARPER and STEUART PURCELL, Members, Constituting the Public Service Commission of Maryland,
Appellees.

No. 64.

HAROLD E. WEST, Chairman, and J. FRANK HARPER and STEUART PURCELL, Members, Constituting the Public Service Commission of Maryland,
Appellants,

vs.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE,
Appellee.

APPEAL FROM, AND CROSS-APPEAL FROM AND PETITION FOR CERTIORARI TO, THE COURT OF APPEALS OF THE STATE OF MARYLAND.

REPLY BRIEF FOR THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE.

In this reply the Commission's brief will be referred to by page numbers (without other designation) thus [1-139]; the Company's original brief will be referred to thus [B. 1-105].

The Commission's brief presents (*a*) the same contentions as the opinions of the Commission and the Court of Appeals to sustain the Commission's conclusions from its findings of fact, (*b*) contentions, (some made below, some entirely new), contrary to the uncontradicted evidence, the Commission's findings of fact and the Court of Appeals' view of the facts and (*c*) much discussion of alleged facts (especially statistical and other matters not mentioned in any of the opinions in the state courts) that seem irrelevant here. In limiting the scope of this reply the Company does not accept, as either relevant or accurate, statements of fact in the Commission's brief not here discussed.

I. Value of Property. [20-40, B. 7-10, 12-14.]

The most extraordinary feature of the Commission's brief is an attempt, *made now for the first time,* to repudiate the Commission's valuation of the Company's property, ($75,000,000), accepted by the Commission itself, the Company, the lower state court and the Court of Appeals as the undisputed value of the property. This attempt involves *all* of the following assertions (here stated briefly): (1) the value of the Company's property has been decreased to less than $75,000,000 by automobile "competition"; (2) the Maryland law compels the Commission to ignore any such decrease in making a valuation; (3) the Commission in its valuation of the Company's property did ignore this decrease in value; (4) the Commission's valuation is only the "Maryland value" of the Company's property and on the question of confiscation is not evidence of its "federal value," *i. e.,* real value. Without stopping to consider the logical sequence or legal soundness of these assertions, it is

sufficient that *each* is contrary to fact and unsupported by evidence.

That the value of the Company's property has been decreased to less than $75,000,000 by automobile "competition" is sheer assertion; it does not become anything more by reiteration or by calling it "an indisputable fact" [24]. The property is used by more people than ever before. *Changed use* of the property, due to increased use of automobiles, is *more costly* (per ride, not necessarily per passenger or even per mile), and therefore necessitates *increased fares;* this does *not* decrease value. A man's house does *not* become *less valuable,* though his *changed use* of it becomes *more costly,* when he so prospers as to buy a second house and occupy the first only part of each year. The Commission's brief refers indiscriminately to "value of property," "value of [regulated or unregulated] business" [22, 23], "return therefrom" [limited by law or unlimited], [23] "earning capacity" [22] and "commercial" earning capacity [unlimited by rate regulation] [24, 26].

There is no such thing as "Maryland value." Maryland *property* exists under Maryland law, but is protected by the federal constitution, even against Maryland legislation. If Maryland property, *e. g.,* easements, is different from property rights elsewhere, it is nevertheless so protected. [B. 9.] Value however is value. "Fair value" under the Maryland statute [section 30; B. 107] is the same as "fair value" under the decisions of this Court. [*Havre de Grace Bridge Co. vs. Public Service Commission,* 132 Md. 16, 26-27.] The *Havre de Grace Bridge* case [27-28] was qualified in the *Miles* case [28-30] *only* to the extent of excluding the possibility that in valuation "for rate-making purposes" anything might be *added* by capitalization (directly or indirectly) of earnings. [*Miles vs. Public Service Commission,* 151 Md. 337, 345.] There is no authority whatever for the

assertion that "Maryland value" may be greater than actual value.

In the Company's valuation case the Commission, after thirty-one days of hearings and three days of arguments [R. 281], and rehearing as to value of easements pursuant to the decision of the Court of Appeals, found the "fair value for rate-making purposes" of the Company's property on December 31, 1923, to be $75,000,000 [R. 356]—an amount considerably less than the amount claimed by the Company. The Commission professed to have given "due weight to the various elements which must be considered in determining the fair value of a property such as that of the United Railways and Electric Company as laid down by the United States Supreme Court in the case of *Smyth vs. Ames.*" [R. 282.]

In the instant case the entire record in the valuation case, including several thousand pages of evidence, (*not* the opinion only without the evidence, as erroneously stated in the Commission's brief [12]), was offered in evidence. [R. 62, 361.] The valuation itself is "*prima facie* evidence of the value of said property" in the instant case. [Section 30; B. 108-109.] The Commission in the instant case "after considering all facts which to it seem relevant" finds the value "at the present time" to be still $75,000,000. [R. 49.] In the lower state court and in the Court of Appeals the Commission's valuation was accepted by both parties. Pursuant to the rules of the Court of Appeals, (which like the rules of this Court require the omission of unnecessary matter from records on appeal [Rule 13; 134 Md. 9-10. *Cf.* Rule 5; 134 Md. 4-5]), the record in the valuation case, except the opinions and orders [R. 279-357] and certain specified parts of the evidence [R. 1306-1347, 1349-1379], were omitted by stipulation from the Record in the Court of Appeals in the instant case. [R. 1615-1616, 1618-1619]. The evidence included relates to rate of return; the evidence relating to value of property was omitted because the Commission's

valuation was undisputed. In the supplemental bill [R. 1686], as in the original bill [R. 7-8], the Company averred, and the Commission in its answer admitted [R. 1699], that the Commission had found "the present fair value of the Company's property used in the public service" to be $75,000,000. The supplemental bill, like the original bill [R. 8], also averred the *fact* to be that "the fair value" of the property is not less than $75,000,000. [R. 1686.] These unqualified averments are made with reference to "federal value" and the federal questions raised in the instant case. Never in pleadings, evidence, arguments or briefs in the lower state court or in the Court of Appeals was the existence of more than one value or of a "Maryland value" in excess of "federal value" suggested. As the Court of Appeals accurately says, "$75,000,000 may be treated as *the true value of the Company's property for all the purposes of this case.*" (Italics ours.) [R. 1631, 155 Md. 585. B. 8, 127.] Even if the present contention in the Commission's brief were not wholly contrary to fact and unsupported by evidence, it would come far too late in this Court.

The Commission's brief enhances the confusion of thought in the Commission's opinion by treating (1) *value of property* and (2) *rate of return* as indistinguishable. The Commission's unique argument that risk limits, instead of increasing, fair *rate of return* [R. 38-39] is now quoted as meaning *not rate of return* but *value of property* [23-24]. In any arithmetical computation two errors *may* minimize each other. In this sense the effect of adopting an inadequate rate of return *may* be partly—only by miraculous coincidence exactly—offset by overvaluation of property. But in no accurate or rational sense can loss of value be allowed for by *either* decreasing *value* or decreasing *rate of return.* [22.]

II. Depreciation Allowance. [40-57, B. 83-96.]

On this question the Commission's brief cites as supporting the Commission's contention, (*a*) accountants [46-49], (*b*) other commissions [49-50] and (*c*) one special master [53-55] and one inaccurately cited decision of this Court [43-45]. As cost is the ordinary basis of accounting and value the constitutional basis of rate-making, little enlightenment on this legal question is furnished by accountants [B. 94-96]—or by commissions, prone to ignore present value and evade the decisions of this Court. [*Southwestern Bell Telephone Co. vs. Public Service Commission,* 262 U. S. 276, 296-297, 301-302, dissenting opinion of MR. JUSTICE BRANDEIS.]

In *United States vs. Ludey,* 274 U. S. 295, [43-45], an income tax case, the question was not whether depreciation should be computed on cost or value, but whether it should be deducted at all in computing gain from sales. As cost is the ordinary *statutory* basis for computing taxable gain, depreciation must be computed for the same purpose on the same basis. [B. 95.] The case however is cited [44] as authority for computing gain on 1913 value and depreciation on cost of the same property. Both the irrelevance and the inaccuracy of the citation are shown by a footnote at at the beginning of the opinion, expressly stating that as to properties purchased before March 1, 1913 "the term cost is used, throughout the opinion, as meaning their value as of March 1, 1913." [274 U. S. 296-297.]

III. Rate of Return. [58-92, B. 28-69.]

On this question the Commission's brief attacks the uncontradicted evidence [58-76] and pronounces "its inherent weight * * * negligible." [76.] This attack really goes (*a*) partly against the *weight* of the evidence, by opposing unsupported assertions contrary to the Commission's own findings against uncontradicted testimony, but *(b)* princi-

pally against the *subject matter* of the evidence, by opposing irrelevant circumstances against the "relevant circumstances" which under the decisions of this Court are controlling. These two lines of attack are not kept distinct. Furthermore assertions as to value of property introduce the same strange confusion of value of property with rate of return as the attempt to repudiate the Commission's valuation [*supra*, 5].

Thus Mr. Hoyt's testimony (in the instant case as in one of the New York gas cases [B. 39, 41]) that an expected return of at least 8 per cent. would be necessary to induce investors to invest their money in the purchase or construction of such a property is assailed because it relates to the Company's property and not to some proposed substitute property. Assertions as to relative values of the Company's property and possible substitute properties are wholly unsupported by evidence. Such assertions relate not to rate of return but to value of property. There is nothing in the Record about substitute properties; if there were, the subject is so remote that such evidence ordinarily would not be useful, even as to value. [*McCardle vs. Indianapolis Water Co.*, 272 U. S. 400, 417-418.]

Mr. Hoyt's testimony is also assailed because as of January 1, 1924, in the valuation case, again in 1926 in the Gas Company rate case and again in 1927 in the instant case he testified that an expected return of *at least* eight per cent. would be necessary and did not attempt to measure any possible differences due to intervening changes in the money market [74-76]. A table of bond prices (in terms of "yield") from 1903 to 1929, taken from Moody's Manual of Investments for 1929, is appended to the Commission's brief [153]. On their face, without expert interpretation, these bond prices for several years past show no change comparable to the difference (judicially noticed in the *Lincoln* gas case) between pre-war and post-war returns, no de-

clining return, no clear trend at all and nothing whatever to impugn Mr. Hoyt's testimony. What is a fair rate of return may of course be affected by changes in the money market, but does not follow all the passing fluctuations in bond prices. The decisions of this Court and of lower federal courts, especially cases cited by this Court [B. 32-39], in "having regard to all relevant facts" [B. 33] have regard not to ephemeral matters but rather to considerations more abiding and capable of more general application. In the instant case the result is the same whether regard be had to the more general or the more particular facts and evidence.

If courts can be expected not only to take judicial notice of any and all financial statistics, but also to interpret their economic significance (distinguishing causes from results), and thereby to disregard uncontradicted testimony of qualified experts, this judicial task is not light and may lead far afield. In the instant case it would at least lead to the statement immediately following (in Moody) the table of bond prices that is appended to the Commission's brief: "The rise in the price of public utility capital was due partly to the unfortunate situation of electric railways, consequent upon the failure of street car fares to keep pace with the advance in operating costs." [Moody's Public Utilities, 1929. Cf. *Bluefield Co. vs. Public Service Commission,* 262 U. S. 679, 694-695, B. 62-63.] It would also lead a few pages farther to a table of "*traction* bond" prices, all showing "yields" much higher than "public utility bonds" in the table in the Commission's brief. [Moody, xxxviii.]

If regard be had to the more general considerations in the instant case, then the uncontradicted evidence that less than eight per cent. is not a fair return is confirmed by the decisions of this Court and by the overwhelming weight of lower federal court decisions, most of which expressly so hold, the rest (with few, if any, exceptions) depending upon smallness of risk or other special circumstances affirma-

tively shown [B. 32-54]. If on the other hand regard be had to the more particular considerations in the instant case, then again the same uncontradicted evidence is confirmed by the also uncontradicted evidence that over a period of years *borrowed* money has cost the Company more than 7 per cent. and this experience is in line with the general situation of street railways [B. 30]. If not less than eight per cent. was a fair return for *other utilities* at *any* of the times when the recent federal cases have so held, then not less than eight per cent. *now* is fair for *street railways* [B. 56].

The uncontradicted testimony of Mr. Hoyt and other witnesses in the instant case not only directly applies the standards announced by this Court in the *Bluefield* case [B. 33], but is (as the Commission's brief states [87]) substantially the same as the testimony of Mr. Hoyt himself and others, followed by federal courts, in other cases. Against *six* such cases, *including one cited by this Court* in the *Indianapolis* water case [86-87], the Commission's brief makes the same attack as against the uncontradicted testimony in the instant case.

The Commission itself never questioned this testimony, but merely tried to escape the *effect* of it by the strange doctrine that risk limits, instead of increasing, fair rate of return and by the other arguments in its opinion [B. 56]. The Court of Appeals' characterization of this testimony is unwarranted; apparently it is the result or the cause of a series of inaccuracies and contradictions as to the purpose and content of this testimony and the nature and effect of the Company's financial structure [B. 68-69]. By ignoring the differences between ordinary mortgage bonds and *income* bonds (without fixed maturity), the ratio of bonds to value of property, *actually 63 per cent.*, becomes apparently 82 per cent. and is called "approximately 90 per cent." in the opinions of the Commission and the Court of Appeals and again in the Commission's brief [70-73]. In any event, the Company's "financial structure" is quite irrelevant. [B. 68-69.]

The Commission's brief renews the Commission's contentions that present confiscation may be justified by low returns on past investments already lost or confiscated, by confiscation in the past, as giving rise to a sort of prescriptive right to confiscate, and by confiscation elsewhere [66-69. B. 65-66, 61-65], and cites returns received by the railroads *as a whole* [69]. This citation (aside from other infirmities) confuses an *achieved average* for *all* with a *permitted maximum* for *one*. Average achievement by all must inevitably fall far short of maximum individual hope. As affirmatively appears in both of the cases that have reached this Court [B. 51-52], these achieved averages of less than 6 per cent. are derived from maxima of more—probably much more—than 8 per cent.

Each of the authorities (except a Virginia state court case) relied on or otherwise cited on the subject of rate of return in the Commission's brief [80-90] was mentioned (and listed in the table of cases) in the Company's brief, where (it is believed) all recent reported federal court cases on rate of return are collected [B. 32-51]. The cases relied on in the Commission's brief do not reflect a recent tendency away from earlier cases, but are merely extreme cases, most, if not all, of them affected by exceptional circumstances.

IV. Value of Service. [93-128, B. 69-83.]

On this subject the Commission's contention is: "Rates must not exceed the value of the service to the public. The Company *has failed to show* that a further increase in the rates of fare *would not be,* under the circumstances, unreasonable to the public." (Italics ours.) [93.] Thus an alleged exception to the constitutional guaranty of the opportunity to earn a fair return becomes the rule; the constitutional guaranty becomes an exception to the rule and can not be invoked without affirmatively *disproving* the application of the rule. As the argument proceeds, the constitutional

guaranty completely vanishes, since the new rule is (as the Court of Appeals says) so "indefinite and vague" that its application can neither be proved nor disproved but "can only rest in the judgment of the Commission" [B. 72-73].

The lengthy discussion centers around the unsupported assertion (contrary to the Commission's findings) that ten cents is more than a ride is worth—to be more exact, more than a ride is worth when the customer chooses to pay for four rides at 8¾ cents each, but not when he chooses to pay for a single ride. To sustain this central assertion other equally unsupported assertions are made—of which two far flung instances will here suffice, viz., (1) that the *billions* of ten cent fares paid in Boston in recent years are [97-98. B. 74-75], and (2) possibly the billions of five cent fares paid in Baltimore and elsewhere thirty years ago were [119-120], more than the value of a ride.

If "value of service to the customer" can be conceived altogether apart from cost, then there are two possible measures of such value, viz., (1) the necessary sacrifice by the Company to produce the service, *i. e.*, cost, and (2) the necessary sacrifice by the customer to get the service, *i. e.*, capacity to pay. *Both* of these measures are rejected [118, 120-121, 127-128] because they fail to support—on the contrary disprove—the assertion that ten cents is more than a ride is worth. Fares elsewhere are suggested as a possible measure [126-127]; but this measure (besides being generally impracticable [B. 63-64]) involves the special absurdity of pronouncing the billions of ten cent fares paid in Boston more than the value of a ride [97-98], as well as the mathematical absurdity of selecting an *average* as a *maximum*, thereby condemning half the items averaged, thus destroying the average and ultimately making the *minimum* anywhere a uniform level everywhere. The most "nearly perfect" measure (it is said) is the effect on riding—*not* on revenue [126-127]. If this measure means anything, it means that any fare at all is more than a ride is worth,

since any fare decreases the number of passengers who would ride if rides were free [B. 73]. To meet this test it would be necessary to abolish carfares and supplant fare boxes by alms basins.

In the discussion of "value of service"—and elsewhere—the Commission's brief discloses the far reaching consequences of the Commission's order and of the contentions now presented by the Commission's counsel to sustain the order. These contentions amount to a definition of "rate regulation" as "rate reduction" and to an assertion of arbitrary power to prevent rate *increases* when cost of service increases and to impose rate *reductions* whenever cost of service decreases. [B. 58-59.] As a sort of "text" at the beginning of the brief, it is stated that "a special problem was * * * presented to the Commission, *i. e.*, what was a just and reasonable fare to the Company when loss of revenue was due to increasing loss of patronage" [5]. To this "special" problem, and to the problem "what is a just and reasonable fare to a utility when gain in revenue is due to increasing gain of patronage," the Constitution gives the same answer, viz., a fare at least sufficient to yield a fair return on the fair value of the property. To say that when a rate is increased "the State subsidizes a declining industry" [119] means exactly the same as to say that when a rate is reduced "the State penalizes a rising industry"; each means absolutely nothing. The Commission's brief more baldly discloses its purpose: "Where rates are inherently low, * * * value of the service will not be accorded weight. Where the contrary is true, it will be accorded weight, and that weight may be controlling" [113]. In other words, when "value of service" is *greater* than cost of service, rates are limited to cost of service; when "value of service" is *less* than cost of service, rates are limited to "value of service."

In short, the whole argument about "value of service" amounts to a claim of arbitrary power in commissions to make rates by a new rule, beyond the reach of courts, which

would only work one way—always against the utility—and would obliterate the constitutional guaranty of the opportunity to earn a fair return.

Respectfully submitted,

CHARLES MCHENRY HOWARD,
CHARLES MARKELL,
HENRY H. WATERS,

Counsel for The United Railways and Electric Company of Baltimore, Appellant in No. 55, Cross-appellee and Respondent in No. 64.

FILE COPY

FILED
APR 30 1929
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1928.

No. ~~332~~ 64

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND,

Cross-Appellants,

v.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE,

Cross-Appellee.

STATEMENT ON BEHALF OF CROSS-APPELLANTS DISCUSSING BASIS ON WHICH THIS COURT HAS JURISDICTION TO REVIEW ON APPEAL THE DECREE OF THE COURT OF APPEALS OF MARYLAND.

THOMAS J. TINGLEY,
RAYMOND S. WILLIAMS,
Counsel for Cross-Appellants.

Baltimore, Maryland,
April 27th, 1929.

King Bros., Inc., Printers, 208 N. Calvert St., Baltimore, Md.

SUBJECT INDEX.

Jurisdictional Statement:	PAGE
A. Statutory Provision	1
B. Date of Decree and Application and Allowance of Cross-Appeal	2
C. Statement of Facts	2
D. Cases Sustaining Jurisdiction	8
1. As to Cross-Appeal	8
2. As to Finality of Decree	11
3. As to Federal Question	12
4. As to Commission's Capacity to Sue	19
Submission	20

TABLE OF CASES CITED.

Alexander v. United States, 201 U. S. 117	9
Arkansas S. R. Co. v. German Nat. Bank, 207 U. S. 270	18
Bessette v. W. B. Conkey Co., 194 U. S. 324	9
Blodgett v. Silberman, 72 L. Ed. (U. S.), 470	19
Bolles v. Outing Co., 175 U. S. 262	9
Board of Liquidation v. Louisiana, 179 U. S. 632	20
Braxton County Court v. W. Va., 208 U. S. 192	19
Consolidated T. Co. v. N. and Ocean View R. Co., 228 U. S. 596	18
Doyle v. London Guarantee and Acci. Co., 204 U. S. 599	9
Field v. Barber Asphalt P. Co., 194 U. S. 618	9, 11
Georgia Railway and Power Co. v. R. R. Comm. (U. S. D. C. N. D. Ga. N. D.), P. U. R. 1925 A, 546	18
Henderson Bridge Co. v. City of Henderson, 173 U. S. 592	18
Illinois Central R. R. Co. v. Int. Com. Comm., 215 U. S. 470	14
Interstate Commerce Commission v. Union Pacific R. R. Co., 222 U. S. 541	13
Klinger v. Missouri, 80 U. S. 257	18
Louisville Navigation Co. v. Oyster Commission, 226 U. S. 99	11
Mayer v. Walsh, 108 U. S. 17	9
M. St. P. & S. S. Ry. v. R. R. Comm., 136 Wis. 146	14

TABLE OF CASES CITED.

PA

Pennsylvania R. R. Co. v. P. S. C. of Md., 126 Md. 59..
P. S. C. of Md. v. Byron, 153 Md. 464.....13, 15,
Re Christensen Engineering Co., 194 U. S. 458.....
Re Merchants Stock and Grain Co., 223 U. S. 639.....
St. Louis, I. M. and S. R. Co. v. McWhirter, 229 U. S. 265.....
Union Tool Company v. Wilson, 259 U. S. 107..... 8,
United States v. Mosby, 133 U. S. 273..... 8,
Walsh v. Mayer, 111 U. S. 31.....8, 9,

TABLE OF STATUTES CITED.

United States Constitution, Fourteenth Amendment.. 3
U. S. Judicial Code, Section 237 (a)..... 1
U. S. Judicial Code, Section 237 (b)..... 5
U. S. Act, Sept. 6, 1916, 39 Stat. L. 726.....
U. S. Act, February 13, 1925, 43 Stat. L. 937.....
Md. Declaration of Rights.....
Bagby's Maryland Code, Art. 23, Sec. 404.....

TEXTBOOKS CITED.

Niles, Maryland Constitutional Law.....

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 826.

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND,

Cross-Appellants,

v.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE,

Cross-Appellee.

STATEMENT ON BEHALF OF CROSS-APPELLANTS DISCUSSING BASIS ON WHICH THIS COURT HAS JURISDICTION TO REVIEW ON APPEAL THE DECREE OF THE COURT OF APPEALS OF MARYLAND.

A.

The statutory provision believed to sustain the jurisdiction of this Court to entertain this cross-appeal is Section 237 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. L. 397; Title 28, paragraph 344, U. S. C. A.).

B.

The date of the decree to be reviewed is July 16th, 1928 (R. 1622, 1653), made final by the decree of March 20th, 1929 (R. 1712). And the date on which the application for this cross-appeal was presented and allowed is April 9th, 1929 (R. 1727).

C.

The cross-appellee in this case has taken an appeal, which is No. 792 of the October Term, 1928, of this Court, from the decree of the Court of Appeals of Maryland, dated March 20th, 1929. The cross-appellants have appealed from an earlier decree of the Court of Appeals in the same proceedings, made final by the same decree. The matters thus determined by the Court of Appeals of Maryland are so inseparably connected that it is impossible for them to be fully and finally determined by this Court, unless both decrees are here reviewed. It is the contention of the cross-appellants that the main appeal draws to it as an incident thereof the matters sought to be here reviewed by the cross-appellants, and, therefore, justifies this cross-appeal. A short statement of the nature of the case and of the rulings below will now be made so that the jurisdictional questions involved may be made clear.

On August 1st, 1927, the United Railways and Electric Company of Baltimore, hereinafter called the Company (cross-appellee here), filed with the cross-appellants, constituting the Public Service Commission of Maryland, hereinafter called the Commission, an application for an increase in its rates of fare for street railway service in the City of Baltimore, Maryland, and its environs, from eight cents cash, with two tokens for fifteen cents, the then prevailing rate, to a flat ten cent rate, with special half fare and commutation rates (R. 89). After lengthy hearings, the Commission, on February 10th, 1928, denied the application for a flat ten cent fare, but authorized the charging of

a nine cent fare, with three tokens for twenty-five cents (R. 57).

The Commission found that the fare fixed by it would yield the Company a return of 6.26 per cent. on the value of its property, which value was fixed at $75,000,000 (R. 48), and which is not in this Court disputed (R. 1631, 1661).

The Commission, in estimating the expenses of the Company, calculated the annual allowance for depreciation so as to restore to the Company the original cost of its property consumed or retired in service, although the basis of calculation actually adopted was to allow an amount equal to five per cent. of the Company's gross revenue (R. 48). When in 1912 the Company first set up a depreciation account, it used the basis just described, and the uniform practice of the Commission in dealing with the Company has been to use the same basis.

Being dissatisfied with the Order of the Commission, the Company, on March 13th, 1928, filed its Bill of Complaint in the Circuit Court No. 2 of Baltimore City, seeking to vacate and enjoin the Order of the Commission (R. 5-13). The Bill alleged in substance that the Order of the Commission was confiscatory and contrary to the Fourteenth Amendment to the Constitution of the United States, and deprived the Company of its property without due process of law, because (1) the fares fixed by said Order would result in an inadequate rate of return on the value of the Company's property; (2) the annual allowance for depreciation was inadequate and was fixed on an improper basis; and (3) the said Order of the Commission further diminished the inadequate return to be received by the Company by reason of the fact that the Company's second fare zone on its Halethorpe line was abolished and a single fare substituted.

The Circuit Court No. 2 of Baltimore City sustained all of these contentions of the Company with the exception of that as to the Halethorpe line. That is to say, the Circuit Court No. 2 of Baltimore City held that the rate of return resulting from the 8 1/3 cent token fare was confis-

catory, and that the annual depreciation allowance should not have been based on cost, but should have been based on the present value of the Company's depreciable property, and the Order of the Commission in these respects was accordingly vacated, and an injunction issued prohibiting the Commission from enforcing its said Order, in so far as the same limited the rates of fare to be charged by the Company (R. 85-86).

Thereupon the Commission took an appeal to the Court of Appeals of Maryland, the highest Court in the State, and the Company took a cross-appeal. The questions thereby raised by the Commission were:

1. Whether the lower Court was right in holding that the rates of fare fixed by the Commission resulted in an insufficient rate of return to the Company;

2. Whether the lower Court was right in requiring the annual depreciation allowance to be so calculated as to restore present value rather than cost.

The question raised by the Company's cross-appeal was whether the lower Court was right in sustaining the Commission's order abolishing the second fare zone on the Company's Halethorpe line.

The Court of Appeals held (R. 1653, 1622):

1. That the rate of return of 6.26 per cent. on the value of the Company's property, which would be produced by the rates of fare fixed by the Commission, was neither confiscatory nor unreasonable as a matter of law (R. 1647), and that, therefore, the decree of the lower Court vacating the Order of the Commission fixing the schedule of fares to be charged by the Company, and enjoining the Commission's Order in that respect, was erroneous:

2. That the lower Court was right in holding that the annual allowance for depreciation should have been based by the Commission not on cost, but on value, and

that that part of the decree of the lower Court should neither be affirmed nor reversed, but the case should be remanded in order that the Commission might further consider the question of depreciation and make any changes in the rate schedule that might be necessary and requisite to yield to the Company a fair and reasonable rate of return (*i. e.*, not more than 6.26 per cent.) upon the fair value of the Company's property; and

3. That that part of the decree of the lower Court which affirmed the order of the Commission, extending the first fare zone of the Halethorpe line to the terminus thereof should be affirmed.

Thereupon the Company appealed to this Court on the ground that the decree of the Court of Appeals deprives it of its property without due process of law, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States. The Company's appeal was filed in this Court on September 21, 1928, and was No. 464, October Term, 1928.

The Commission filed in this Court its cross-appeal No. 465, October Term, 1928, simultaneously with the filing of the Company's appeal, raising the question as to whether it is contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States to so calculate the annual allowance of the Company for depreciation as to restore the original cost, rather than present day value, of depreciable property consumed or retired in service.

The Commission also filed a petition for a writ of certiorari, on the same grounds.

This Court, on November 19th, 1928, dismissed both appeals, and denied the petition for certiorari, on the ground that the decree of the Court of Appeals, called into question, was not final, within the meaning of Sections 237 (a) and 237 (b) of the Judicial Code of the United States.

Meanwhile, the Commission had made a thorough investigation of the condition of the property of the Company, pursuant to the direction of the Court of Appeals, had held hearings with reference thereto, and entered its Opinion and Order No. 13420, dated November 28th, 1928, increasing the Company's annual depreciation allowance to $1,638,660, computed on a basis of value, or $755,116 more than the original allowance of $883,544, calculated to restore cost, of property consumed or retired in service, and increasing the fare charged by the Company to the public to ten cents cash, with four tokens for thirty-five cents (R. 1691).

On December 12th, 1928, the Company filed in the Circuit Court No. 2 of Baltimore City its Supplemental Bill of Complaint (R. 1681), containing the same allegations as to rate of return and the extension of the single fare zone to Halethorpe as did the original Bill of Complaint, and reciting the proceedings above outlined regarding the question of depreciation, but not complaining of the Commission's action with respect thereto. This Supplemental Bill was dismissed on January 10th, 1929 (R. 1705), and this action affirmed by the Court of Appeals on March 20th, 1929 (R. 1712).

Thereupon, the Company again appealed to this Court, the appeal being filed on March 27th, 1929, and being No. 792, October Term, 1928. The Commission has also again appealed with respect to the proper basis for calculating the annual depreciation allowance, its appeal being No. 826, October Term, 1928.

It is apparent, therefore, that the appeal of the Company is based on its claim that the decree of the Court of Appeals, upholding the action of the Commission as to rate of return, held valid a State statute claimed to be invalid under the Constitution of the United States, and, therefore, denied the Company's claim of Federal right, with the result that this Court has jurisdiction to determine the Company's appeal under Section 237 (a) of the Judicial Code.

As already stated, the Company claimed, in the Court of

Appeals of Maryland, that the action of the Commission in fixing its annual depreciation allowance so as to restore the *cost*, rather than the *present value* of its depreciable property, constituted a deprivation of its property under the Fourteenth Amendment to the Constitution of the United States. The Court of Appeals upheld this contention of the Company, thereby sustaining its claim of Federal right, so that ordinarily the Commission would have no right to take an appeal to this Court, but would be required to proceed by way of certiorari under Section 237 (b). The Commission, out of abundant caution, has already filed such a petition in this Court as a motion in this case. The Commission here contends, however, that this Court has jurisdiction to entertain this cross-appeal.

The Court of Appeals of Maryland held (R. 1647) that a schedule of fares which would yield to the Company a return of 6.26 per cent. on the value of its property, was neither confiscatory nor unreasonable as a matter of law; but it further held that the question as to whether or not the schedule of fares fixed by the Commission would in fact yield the Company that percentage of return, depended on whether or not the depreciation allowance was sufficient. And in passing on this question the Court of Appeals further decided that the basis of cost used by the Commission was illegal and that the basis of present value contended for by the Company should have been adopted; but the Court found itself unable to say on the facts in the Record what amount in dollars should have been allowed (R. 1648), and accordingly remanded the case to the Commission in order that it might consider and determine the proper allowance for depreciation, in accordance with the rule of law laid down by the Court (R. 1648, 1653). It is apparent that in fact, as well as under the rulings of the Court of Appeals, the question of depreciation is so intimately interconnected with the question of the rate of return that the latter question cannot be decided without consideration of the former. And the Circuit Court No. 2 of Baltimore City expressly found this to be the case (R. 67).

D.

1. Jurisdiction to Entertain Cross-Appeal.

The cases believed to sustain the jurisdiction of this Court to entertain this cross-appeal are the following:

Union Tool Company v. Wilson (1922), 259 U. S. 107;
Walsh v. Mayer (1884), 111 U. S. 31;
United States v. Mosby (1889), 133 U. S. 273.

These cases, taken in combination, sustain the following propositions: (1) that jurisdiction of a cross writ of error will be entertained even though the plaintiff in error in such cross writ of error had no independent right to a writ of error at all, but only a right to proceed by way of appeal; and even though such cross writ of error was sued out at a time when the plaintiff in error could not have prosecuted an appeal because the judgment was not as to him at that time a final judgment. (2) That jurisdiction of a cross appeal will be entertained, though involving less than the statutory jurisdictional amount and though consequently the cross-appellant could not have maintained an appeal himself.

In *Union Tool Company v. Wilson, supra,* the Court said:

> "The contention that the Court of Appeals was without jurisdiction of the cross writ of error is renewed here. It is argued that the judgment for contempt, so far as now sought to be reviewed, is remedial, not punitive; that, being remedial, it can be reviewed only on appeal, and not on writ of error; that an appeal will not lie until after the final decree; and that no final decree had been entered, as the accounting was still in process. It is true that the part of the judgment for contempt now under review is remedial. But it does not follow that the Court of Appeals lacked jurisdic-

tion to review it on the cross writ of error. The district court entered a single order, part remedial, part punitive. Where a fine is imposed partly as compensation to the complainant and partly as punishment, the criminal feature of the order is dominant and fixes its character for purposes of review. *Re Merchants' Stock & Grain Co.*, 223 U. S. 639. If the company had acquiesced in the judgment entered, Wilson, having no right to initiate a review of the punitive part, could not have instituted any appellate proceeding until after final decree. *Re Christensen Engineering Co.*, 194 U. S. 458; *Doyle v. London Guarantee & Acci. Co.*, 204 U. S. 599; See also *Alexander v. United States*, 201 U. S. 117. But an order punishing one criminally for contempt is a final judgment. The contemner may obtain immediately a review by writ of error. *Bessette v. W. B. Conkey Co.*, 194 U. S. 324. And the company availed itself of this right. When the order was thus brought before the Court of Appeals, it acquired, at the company's instance, jurisdiction to review that part which was civil as well as that which was criminal in its nature. In the exercise of that jurisdiction it granted, in respect to Double, relief which affected both the criminal and the civil parts of the order. If a cross writ of error had not been filed, Wilson could not have secured from the Court of Appeals relief in respect to that part of the order which was unfavorable to him. *Bolles v. Outing Co.*, 175 U. S. 262. But a cross writ was duly filed, and that enabled the court to review the portion of the order, civil in its nature, which Wilson alleged to be erroneous; for the judgment in the contempt proceeding was a unit. The case resembles in some respects *Mayer v. Walsh*, 108 U. S. 17; *Walsh v. Mayer*, 111 U. S. 31. Compare *Field v. Barber Asphalt Paving Co.*, 194 U. S. 618. The facts relating to the sale of spare parts were agreed; and the question before the court was merely as to their

legal effect. That question could appropriately be considered on cross writ of error, even without resort to the power conferred by Section 4 of the Act of September 6, 1916, chap. 448, 39 Stat. at L. 726, Comp. Stat. Section 1207, Fed. Stat. Anno. Supp. 1918, p. 411."

In *Walsh v. Mayer, supra,* the Court said at page 37:

"We have disposed of the case upon both appeals. The motion to dismiss the cross appeal of the defendants below, for want of jurisdiction, on the ground that the amount in controversy is less than $5,000 is overruled. The cross appeal, it is true, is from a decree awarding against the defendants below less than that amount, and it could not, therefore, be maintained by itself; but the appeal of the plaintiffs below, to which it is incident, opened the whole controversy here, so far as they were concerned, and that of the defendants must be allowed to have the like effect as to them; so that upon both appeals the case was brought up as it stood for hearing in the court below, the claims of the respective parties involving the question of liability as to the whole amount."

In *United States v. Mosby,* the Court said at page 289:

"It is contended for the United States that the claimant has no right to appeal in regard to the items which he claims were improperly disallowed, because they do not in the aggregate amount to more than $3,000. But we are of opinion that, as section 707 of the Revised Statutes authorizes an appeal to this court on behalf of the United States, from all judgments of the Court of Claims adverse to the United States, and as the appeal by the United States in this case is from the judgment of $13,839.21 in favor of the claimant, it is competent for the claimant, as he also has taken an appeal from that judgment, to avail himself of anything in the case which properly shows that that judgment was not for too large a sum."

It is, of course, true that each of the cited cases involved a proceeding in the Federal Courts and did not involve, as in the case at bar, an appeal or writ of error from the highest Court of a State, and this consideration may be advanced to distinguish the case at bar from these authorities.

Mr. Justice Brandeis, however, in his opinion in the *Union Tool Company case, supra,* considered the doctrine announced by these cases as of general application; he did not place the decision on the ground that in the federal courts the whole record is open up on writ of error. This is shown by the fact that *Field v. Barber Asphalt Co.,* 194 U. S. 618, cited in the extract above, is cited for comparison only and not as controlling authority. Furthermore, in the case at bar, our contention is that the decree made final by the decree from which this cross-appeal is taken, involves a Federal question which is inseparably connected with the Federal question involved in the main appeal. If such a question could not be raised by cross appeal in seeking review of the decision of the highest court of a State, a litigant might be able to invoke review of part only of an inseparable Federal question actually presented by the case.

2. Finality of Decree.

The decree of the Court of Appeals of Maryland, dated July 16th, 1928, is subject to review in these proceedings, the decree of March 20th, 1929, being final in character, within the meaning of Section 237 (b) of the Judicial Code.

As Mr. Chief Justice White said in *Louisiana Navigation Co. v. Oyster Commission* (1912), 226 U. S. 99:

> "The rule which excludes the right to review questions arising in a cause depending in a State Court until a final judgment is rendered by said Court involves as a necessary correlative the power and duty in this Court when a final judgment in form is ren-

dered and the cause is brought here for review, to consider and pass upon all the Federal controversies in the cause, irrespective of how far it may be that by the State law such questions were concluded during the litigation, and before a final judgment susceptible of review here was rendered."

3. Federal Question.

The decree of the Court of Appeals of Maryland under consideration involves a Federal question reviewable by the Supreme Court of the United States.

Article 23, Section 404 of Bagby's Annotated Code of the Public General Laws of Maryland (1924), which is Section 43 of the Maryland Public Service Commission Law (Md. Acts 1910, Ch. 180), provides, in part, as follows:

> "Any corporation subject to this sub-title, or any of the provisions of this sub-title, and any person in interest being dissatisfied with any order of the Commission, fixing any rate or rates, tolls, charges, schedules, joint rate or rates, or any order fixing any regulations, practices, acts or service, may commence any (an) action in the Circuit Court for any county, or before any judge of the Supreme Bench of Baltimore City, in any court of Baltimore City of appropriate jurisdiction which may be adopted for the purpose, against the commission as defendant to vacate and set aside any such order on the ground that the rate or rates, tolls, charges, schedules, joint rate or rates, fixed in such order is *unlawful,* or that any such regulation, practice, act or service fixed in such order is *unreasonable,* in which action a copy of the complaint shall be served with the summons." (Italics ours.)

The functions of the Maryland courts in reviewing a decision of the Commission are accordingly limited to the question of whether it is unlawful or unreasonable, or both:

"The first rule is, the order will not be disturbed except upon clear and satisfactory evidence that it is unreasonable or unlawful. This is a legislative mandate which is reinforced by the fact that the Commission is a tribunal erected by law, informed by experience, and assisted by a trained corps of subordinates."

Public Service Commission v. Byron (1927), 153 Md. 464.

It will be noted that the statutory provision in terms purports to limit review of rate-fixing orders to the question of *lawfulness*. No such limitation has been imposed in its judicial construction, however. In the case above cited, the Maryland Court of Appeals held that the Commission has

"an indivisible power to pass lawful and reasonable orders in the performance of its statutory duties."

In *Interstate Commerce Commission v. Union Pacific Railroad Company* (1912), 222 U. S. 541, cited with approval as to this point by the Court of Appeals in the *Byron Case, supra,* the content and limits of the two words above used were indicated. At page 547, Mr. Justice Lamar said:

"In cases thus far decided, it has been settled that the orders of the Commission are final unless (1) beyond the power which it could constitutionally exercise; or (2) beyond its statutory power; or (3) based upon a mistake of law. But questions of fact may be involved in the determination of questions of law, so that an order, regular on its face, may be set aside if it appears that (4) the rate is so low as to be confiscatory and in violation of the constitutional prohibition against taking property without due process of law; or (5) if the Commission acted so arbitrarily and unjustly as to fix rates contrary to evidence, or without evidence to support it; or (6) if the authority therein involved has been exercised in such an unreasonable manner as to cause it to be within the elementary rule

that the substance, and not the shadow, determines the validity of the exercise of the power."

The situations assumed in divisions (5) and (6) of the foregoing outline are instances of an unreasonable, as distinguished from a merely unlawful, order. The use of the word "unreasonable" in the statute does not mean that the Court will substitute its judgment for that of the Commission.

> "If the order be found such that reasonable men might well differ as to its correctness, it cannot be said to be unreasonable."
>
> *M., St. P. & S. S. Ry. v. R. R. Comm.*, 136 Wis. 146, cited with approval in the *Pennsylvania Railroad Company case, infra.*

The Court of Appeals, in the case of *Pennsylvania R. R. Co. v. Public Service Commission*, said (126 Md. 59, at 78):

> "The whole duty, power and function of the Court in such cases was well summed up by Chief Justice White in *Ill. Cent. R. R. v. Int. Com. Comm.*, 215 U. S. 470, when he said:
>
> " 'Beyond controversy, in determining whether an order of the Commission shall be suspended or set aside, we must consider (a) all relevant questions of constitutional power or right; (b) all pertinent questions as to whether the administrative order is within the scope of the delegated authority under which it purports to have been made, and (c) a proposition that we state independently, although in its essence it may be contained in the previous one, viz., whether although the order may be in form within the delegated power, nevertheless it must be treated as not embraced therein, because the exertion of authority which is questioned has been manifested in such an unreasonable manner as to cause it in truth to be within the elementary rule, that the substance and not the

shadow determines the validity of the exercise of the power. Plain as it is that the powers just stated are of the essence of judicial authority, and which, therefore, may not be curtailed and whose discharge may not be by us in a proper case avoided, it is equally plain that such perennial powers lend no support whatever to the proposition that we may, under the guise of exerting judicial power, usurp merely administrative functions, by setting aside a *lawful* administrative order upon our conception as to whether the administrative power has been *wisely* exercised.' " (Italics ours.)

And the Court of Appeals of Maryland said in the *Byron case, supra*:

"When such a question reaches an appellate tribunal for review in an effort to have the order annulled, the court has no power to substitute its own judgment for that of the Commission, and unless it be made to appear by clear and satisfactory evidence that the order was unreasonable, the courts are powerless to set it aside on that ground."

There is, then, a *prima facie* presumption of reasonableness of the action of the Commission, provided that the action be lawful. Once the lawfulness be established, the Court will not substitute its judgment for that of the Commission, or interfere with the order unless it is manifestly arbitrary. And the arbitrary character must be established by evidence. But if the order be unlawful, by reason, for instance, of repugnance to the Federal Constitution, it might be said by the Court, as was done in this case, to be unlawful and unreasonable, because unlawfulness is found as a matter of constitutional right, and unreasonableness, assuming the hypothesis of unconstitutionality, follows.

The decision of the Court of Appeals does not rest, as a self-sufficient and independent ground of judgment, on a

determination that calculating the annual depreciation allowance so as to restore cost, and not value, of depreciable property is *unreasonable*. It turns, not on an analysis of testimony, but on a question of law. The Court, after criticising the action of the Commission in *basing* the annual depreciation allowance on gross revenues of the Company, said:

> "But even so, if the conclusion actually reached was proper, the fact that it was reached by improper methods, would not justify us in disturbing it, so that the more important question is whether the base of the calculation by which it was tested (the restoration of cost, not value, of depreciable property consumed or retired in service), was itself *lawful.*" (Italics ours.) (R. 1649.)

As to this, the Court said that it involved

> "substantive rights protected by constitutional guaranties" (R. 1648), and that "to require the Company to sell its service at rates which made no provision at all for the replacement or repair of the property when worn out or obsolete, would be plain confiscation, and to require it to sell it at rates that make an inadequate provision for the return of its value when worn out or obsolete as a result of public service, can be no less" (R. 1650).

Any incidental imputation of unreasonableness in the opinion of the Court is predicated upon an assumption of unlawfulness, *i. e.*, unconstitutionality. The Court did not rest its opinion upon this ground as an independent base, nor consider the question in such a manner that it could have done so.

> "The mere ruling that there was evidence sufficient to authorize the consideration of the case from the point of view of negligence alone affords no basis for saying that the case was decided on such ground. Mere conjecture may not be indulged in for the purpose of

concluding that because there was a potentiality of considering the case from a non-Federal point of view, therefore it was considered and decided in that aspect."

St. Louis, I. M. & S. R. Co. v. McWhirter (1913), 229 U. S. 265.

Obviously, the question of the lawfulness of the order in this case *includes* the question as to whether the order is invalid, as a matter of law, under the provisions of the Fourteenth Amendment to the Constitution of the United States. As a matter of fact, the constitutional validity of the order was the *only* question considered by the Court in connection with the lawfulness of the order. The opinion is expressly based upon a finding of confiscation, and predicated upon an assumption of the existence of constitutional guaranties. The finding of unlawfulness is tantamount, and only tantamount, to a finding of unconstitutionality.

The Company attacked the order as repugnant to both the Federal and State Constitutions. Article 23 of the Maryland Declaration of Rights (Bagby's Annotated Code of the Public General Laws of Maryland, 1924, vol. 1, p. 57), provides:

"That no man ought to be taken, or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the Land."

This is the only applicable section of the Maryland Constitution. It is coextensive with the Fourteenth Amendment to the Federal Constitution, *Niles, Maryland Constitutional Law*, p. 46. The Court might have rested its decision on either the Federal or the State Constitution, or both. Either, alone, would have been sufficient. The Federal Constitution was, of course, of paramount sanction. For that reason, apparently, the decision is predicated on the Fourteenth Amendment alone. For that Amendment is re-

ferred to throughout the opinion, while Article 23 of the Declaration of Rights is never mentioned.

It is well settled that where the State court bases its decision in part on non-Federal grounds, which are in themselves broad enough to sustain it, a Federal question presented by the case will not be reviewed by the Supreme Court of the United States, *Consolidated Turnpike Co. v. Norfolk and Ocean View Ry. Co.* (1913), 228 U. S. 596, even though the decision on the non-Federal ground be deemed erroneous. *Arkansas S. R. Co. v. German National Bank* (1907), 207 U. S. 270. And where it does not appear on which of two grounds the judgment was based, and the non-Federal ground is a good and valid one, sufficient in itself to sustain the judgment, the Supreme Court will not review the decision. *Klinger v. Missouri* (1871), 80 U. S. 257.

But the mere fact that the decision *might have been* rested on non-Federal grounds, does not preclude review. *Henderson Bridge Co. v. City of Henderson* (1899), 173 U. S. 592.

In the present case, the State Court might have based its action on non-Federal grounds. It does not appear that it did so. Virtually its sole inquiry was as to the *lawfulness* of the order; it tested that by constitutionality; and its only references indicating detailed judicial consideration are to the Fourteenth Amendment to the Constitution of the United States. Certainly there is no indication that the Court regarded any independent and non-Federal ground as a separate and sufficient basis for its decree.

It may be noted in passing that some doubt might be entertained as to the validity of such State grounds, under the Federal Constitution, even had they been advanced as an independent basis for the opinion. *Georgia Railway and Power Co., v. Railroad Commission of Georgia* (U. S., D. C. N. D., Ga., N. D.—Master's Report, 1924), P. U. R. 1925 A, 546, at 595. But no such question is presented. The decision is rested on a Federal ground, and is a proper subject for review by this Court.

4. Commission's Capacity to Sue.

The Public Service Commission of Maryland has the legal capacity to prosecute this cross-appeal to review the decision against it by the Court of Appeals of Maryland. See the following cases:

Blodgett v. Silberman (April 16, 1928), 72 Law Ed. 470, at 472:

In this case the State Tax Commissioner of Connecticut computed a transfer tax on certain property owned by a resident of Connecticut, which property, however, was physically located in New York. The highest Court of Connecticut held that certain items of such property were not subject to the Connecticut transfer tax because they were not within the taxable jurisdiction of Connecticut, and, therefore, could not be taxed by that State without violating the Fourteenth Amendment to the Federal Constitution. The State Tax Commissioner thereupon applied for and was allowed a writ of certiorari from the Supreme Court of the United States, to review the adverse action of the highest State Court. The Supreme Court granted the writ and decided the case on the merits; thereby necessarily holding that such a state official had a standing to question in this Court, the decision of the highest Court of his State.

Nor does the case at bar fall within the line of decisions in which the right of public officers and public bodies exercising ministerial functions, to review in the Supreme Court of the United States adverse rulings of the highest Court of the State, under certain circumstances, has been questioned.

Braxton County Court v. West Virginia (1908), 208 U. S. 192.

The rule in question only applies where the officer or body seeking the review does not occupy a representative capacity with respect to the interests which he is seeking to protect.

Board of Liquidation v. Louisiana (1901), 179 U. S. 622.

The Maryland Public Service Commission has been designated by the Court of Appeals of Maryland as

> "the statutory public defender or representative of all interests, save those which are participating in the attack upon the order, since any one not objecting becomes through acquiescence identified with the public, whose rights and interests always are the primary concern of the Commission, which at once asserts and protects them through its official position."
>
> *Public Service Commission v. Byron* (1927), 153 Md. 464, at page 471.

The Commission, accordingly, is fully empowered to raise the question here presented for review.

Respectfully submitted,

THOMAS J. TINGLEY,
RAYMOND S. WILLIAMS,
Counsel for Cross-Appellants, Harold E. West, Chairman, et al., Constituting the Public Service Commission of Maryland.

Baltimore, Maryland,
April 27th, 1929.

FILE COPY

FILED
APR 30 1929
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 64

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND,

Petitioners,

v.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE.

On Appeal From the Court of Appeals of the State of Maryland.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND, AND BRIEF IN SUPPORT THEREOF.

RAYMOND S. WILLIAMS,
THOMAS J. TINGLEY,

Counsel for Petitioners.

Baltimore, Maryland,
April 27th, 1929.

King Bros., Inc., Printers, 208 N. Calvert St., Baltimore, Md.

SUBJECT INDEX.

	Page
Petition for Writ of Certiorari	1
Summary statement of the matter involved	1
Reasons relied on for the allowance of the writ	6
Prayer for writ	7
Brief in support of Petition for Writ of Certiorari	8
I. The opinions of the Courts below	8
II. Jurisdiction	9
III. Statement of the Case	19
IV. Specification of Errors	20
V. Argument	20
Summary of Argument	20
Point A. This Court has not decided the question as to whether an annual depreciation allowance of a public utility should be based on the cost of its depreciable property or on the present value thereof. We submit that it is of great public importance that this Court should determine the question here raised	21
Point B. The decision of the Court of Appeals of Maryland is at variance with the decisions of this Court in cases involving related questions	25
Point C. The decision of the Court of Appeals is contrary to the weight of authority. It is contrary to the practice of the Interstate Commerce Commission and to the practically unanimous holdings of State regulatory bodies. It is supported by but two State cases and one District Court case	27
Conclusion	37

TABLE OF CASES CITED.

Aluminum Goods Mfg. Co. v. Laclede Gas Light Co. (Mo. P. S. C.), P. U. R. 1927 B, 1	29
Arkansas S. R. Co. v. German Nat. Bank, 207 U. S. 270	17

Pa
Baird v. Burleson (N. Y. P. S. C., 2nd Dist.), P. U. R. 1920 D, 529.....
Blodgett v. Silberman, 72 L. Ed. (U. S.) 470.....
Bluefield Water Co. v. P. S. C., 262 U. S. 679.....22,
Board of Liquidation v. Louisiana, 179 U. S. 622.....
Braxton County Court v. W. Va., 208 U. S. 192.....
Brush Electric Company v. Galveston, 262 U. S. 443..22,
Cincinnati and Sub. B. Tel. Co., P. U. R. 1924 E, 849..
Consolidated T. Co. v. N. and Ocean View R. Co., 228 U. S. 596.....
Freeport v. Freeport Gas Co. (Ill. Comm. Comm.), P. U. R. 1924 E, 99.....
Georgia Railway and Power Co. v. R. R. Comm. (U. S. D. C. N. D. Ga. N. D.), P. U. R. 1925 A, 546.....18, 25,
Georgia Railway and Power Co. v. R. R. Comm., 262 U. S. 625.....22, 24,
Henderson Bridge Co. v. City of Henderson, 173 U. S. 592.....
Hopkins v. S. W. Bell Tel. Co., 115 Kan. 236.....
Illinois Central R. R. v. Int. Com. Comm., 215 U. S. 470.....
Interstate Commerce Commission v. Union Pacific R. R. Co., 222 U. S. 541.....
King Mfg. Co. v. City Council of Augusta, 72 L. Ed. (U. S.) 544.....
Klinger v. Missouri, 80 U. S. 257.....
Knoxville v. Knoxville Water Co., 212 U. S. 1..22, 25, 26,
Louisiana Navigation Co. v. Oyster Commission, 226 U. S. 99.....
Michigan P. U. C. v. Mich. St. Tel. Co., 228 Mich. 658
Milwaukee Electric R. and L. Co. v. Milwaukee (Wis. R. R. Comm.), P. U. R. 1918 E, 1.....
M., St. P. & S. S. Ry. v. R. R. Comm., 136 Wis. 146..
Minnesota Rate Cases, 230 U. S. 352.....22,
Pennsylvania R. R. Co. v. P. S. C. of Md., 126 Md. 59
P. S. C. of Md. v. Byron, 153 Md. 464.....12, 14,

Page

Re Big Spring Electric Co. (Utah P. U. C.), P. U. R. 1927 A, 655 34
Re Butler Telephone Co. (Ind. P. S. C.), P. U. R. 1925 A, 240 33
Re Butler Telephone Co. (Ind. P. S. C.), P. U. R. 1927 C, 800 33
Re Capital City Water Co. (Mo. P. S. C.), P. U. R. 1925 D, 41 29
Re Coast Gas Co. (N. J. Bd. of P. U. C.), P. U. R. 1923 A, 349 33
Re Duluth Rwy. Co. (Minn. R. and W. Comm.), P. U. R. 1927 A, 41 34
Re Elizabethtown Water Co. (N. J. Bd. of P. U. C.), P. U. R. 1927 E, 39 34
Re Indianapolis Water Co. (Ind. P. S. C.), P. U. R. 1925 C, 431 33
Re Jackson County L., H. & P. Co. (Mo. P. S. C.), P. U. R. 1926 D, 737 29
Re Kansas City Gas Co. (Mo. P. S. C.), P. U. R. 1925 A, 653 29
Re Kinloch-Bloomington Tel. Co. (Ill. Comm. Comm.), P. U. R. 1927 E, 135 29
Re Lebanon Telephone Co. (Ind. P. S. C.), P. U. R. 1925 B, 225 33
Re Missouri Union Tel Co. (Mo. P. S. C.), P. U. R. 1926 A, 842 28
Re Phillipine Shipowners' Assn. (P. I. P. S. C.), P. U. R. 1921 C, 536 34
Re Rockford Electric Co. (Ill. Comm. Comm.), P. U. R. 1925 D, 154 31
Re Rockford Gas Light and Coke Co. (Ill. Comm. Comm.), P. U. R. 1922 E, 756 31
Re Wisconsin-Minnesota L. and P. Co. (Wis. R. R. Comm.), P. U. R. 1920 D, 428 32
St. Louis, I. M. and S. R. Co. v. McWhirter, 229 U. S. 265 16
S. W. Bell Tel. Co. v. P. S. C., 262 U. S. 276 ..... 22, 24

Page

United Fuel and Gas Co. v. R. R. Comm., 13 Fed. (2nd) 510. 36
West v. United Railways and Electric Co., 142 Atl. 870. 8
Williams, Ex Parte, 72 L. Ed. (U. S.) 591. 10

TABLE OF STATUTES CITED.

United States Constitution, Fourteenth Amendment, 2, 4, 6, 7, 10, 17, 18, 20, 37
U. S. Judicial Code, Section 237 (b). 5, 7, 10, 11
U. S. Act, February 13, 1925, 43 Stat. L. 937. . . . . 7, 10
Md. Declaration of Rights. 16, 17
Bagby's Maryland Code, Art. 23, Sec. 404. 11

TEXTBOOKS CITED.

Depreciation Charges, 118 I. C. C. Rep., 295 et seq. . 35, 36
Hayes, Public Utilities, Their Fair Present Value and Return. 26
Lyndon, Rate Making for Public Utilities. 26
Niles, Maryland Constitutional Law. 17
Whitten-Wilcox, Valuation of Public Service Corporations. 35

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 826.

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND,

Petitioners,

v.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE.

On Appeal From the Court of Appeals of the State of Maryland.

PETITION FOR WRIT OF CERTIORARI.

May it Please the Court:

The petition of Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, constituting the Public Service Commission of Maryland, respectfully shows to this Honorable Court:

A.

Summary Statement of The Matter Involved.

On August 1, 1927, The United Railways and Electric Company of Baltimore, hereinafter called the Company, filed with your petitioners, constituting the Public Service Commission of Maryland, hereinafter called the Commis-

sion, an application for an increase in its rates of fare for street railway service in the City of Baltimore, Maryland, and its environs, from eight cents cash, with two tokens for fifteen cents, the then prevailing rate, to a flat ten cent rate, with special half fare and commutation rates (R. 89). After lengthy hearings, the Commission, on February 10th, 1928, denied the application for a flat ten cent fare, but authorized the charging of a nine cent fare, with three tokens for twenty-five cents (R. 57).

The Commission found that the fare fixed by it would yield the Company a return of 6.26 per cent. on the value of its property, which value was fixed at $75,000,000 (R. 48), and which is not in this Court disputed (R. 1631, 1661).

The Commission, in estimating the expenses of the Company, calculated the annual allowance for depreciation so as to restore to the Company the original cost of its property consumed or retired in service, although the basis of calculation actually adopted was to allow an amount equal to five per cent. of the Company's gross revenue (R. 48). When in 1912 the Company first set up a depreciation account, it used the basis just described, and the uniform practice of the Commission in dealing with the Company has been to use the same basis.

Being dissatisfied with the Order of the Commission, the Company, on March 13th, 1928, filed its Bill of Complaint in the Circuit Court No. 2 of Baltimore City, seeking to vacate and enjoin the Order of the Commission (R. 5-13). The Bill alleged in substance that the Order of the Commission was confiscatory and contrary to the Fourteenth Amendment to the Constitution of the United States, and deprived the Company of its property without due process of law, because (1) the fares fixed by said Order would result in an inadequate rate of return on the value of the Company's property; (2) the annual allowance for depreciation was inadequate and was fixed on an improper basis, and (3) the said Order of the Commission further diminished the inadequate return to be received by the Company

by reason of the fact that the Company's second fare zone on its Halethorpe line was abolished and a single fare substituted.

The Circuit Court No. 2 of Baltimore City sustained all of the contentions of the Company with the exception of that as to the Halethorpe line. That is to say, the lower Court held that the rate of return resulting from the 8 1/3 cent fare was confiscatory, and that the annual depreciation allowance should not have been based on cost, but should have been based on the present value of the Company's depreciable property, and the Order of the Commission in these respects was accordingly vacated, and an injunction issued prohibiting the Commission from enforcing its said Order, in so far as the same limited the rates of fare to be charged by the Company (R. 85-86).

Thereupon the Commission took an appeal to the Court of Appeals of Maryland, the highest Court in the State, and the Company took a cross-appeal. The questions thereby raised by the Commission were:

1. Whether the lower Court was right in holding that the rates of fare fixed by the Commission resulted in an insufficient rate of return to the Company;

2. Whether the lower Court was right in requiring the annual depreciation allowance to be so calculated as to restore present value rather than cost.

The question raised by the Company's cross-appeal was whether the lower Court was right in sustaining the Commission's Order abolishing the second fare zone on the Company's Halethorpe line.

The Court of Appeals held (R. 1653,1622):

1. That the rate of return of 6.26 per cent. on the value of the Company's property, which would be produced by the rates of fare fixed by the Commission,

was neither confiscatory nor unreasonable as a matter of law (R. 1647), and that, therefore, the decree of the lower Court vacating the Order of the Commission fixing the schedule of fares to be charged by the Company, and enjoining the Commission's Order in that respect, was erroneous;

2. That the lower Court was right in holding that the annual allowance for depreciation should have been based by the Commission not on cost, but on value, and that that part of the decree of the lower Court should neither be affirmed nor reversed, but the case should be remanded in order that the Commission might further consider the question of depreciation and make any changes in the rate schedule that might be necessary and requisite to yield to the Company a fair and reasonable rate of return (i. e., not more than 6.26 per cent. upon the fair value of the Company's property); and

3. That that part of the decree of the lower Court which affirmed the order of the Commission, extending the first fare zone of the Halethorpe line to the terminus thereof, should be affirmed.

Thereupon the Company appealed to this Court on the ground that the decree of the Court of Appeals deprived it of its property without due process of law, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States. This appeal was filed in this Court on September 21, 1928, and was No. 464, October Term, 1928.

The Commission filed in this Court its cross-appeal No. 465, October Term, 1928, simultaneously with the filing of the Company's appeal, raising the question as to whether it is contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States to so calcu-

late the annual allowance of the Company for depreciation as to restore the original cost, rather than present day value, of depreciable property consumed or retired in service. It filed a petition for a writ of certiorari, on the same grounds as a motion in this case.

This Court, on November 19th, 1928, dismissed both appeals, and denied the petition for certiorari, on the ground that the decree of the Court of Appeals, called into question, was not final, within the meaning of Section 237 (a) and 237 (b) of the Judicial Code of the United States.

Meanwhile the Commission had made a thorough investigation of the condition of the property of the Company, pursuant to the direction of the Court of Appeals, had held hearings with reference thereto, and entered its Opinion and Order No. 13420, dated November 28th, 1928, increasing the Company's annual depreciation allowance to $1,638,660, computed on a basis of value, or $755,116 more than the original allowance of $883,544, calculated to restore cost, of property consumed or retired in service, and increasing the fare charged by the Company to the public to ten cents cash, with four tokens for thirty-five cents (R. 1691).

On December 12th, 1928, the Company filed in the Circuit Court No. 2 of Baltimore City its Supplemental Bill of Complaint (R. 1681), containing the same allegations as to rate of return and the extension of the single fare zone to Halethorpe as did the Original Bill of Complaint, and reciting the proceedings above outlined regarding the question of depreciation, but not complaining of the Commission's action with respect thereto. This Supplemental Bill was dismissed on January 10th, 1929 (R. 1705), and this action affirmed by the Court of Appeals on March 20th. 1929 (R. 1712).

Thereupon the Company again appealed to this Court, the appeal being filed on March 27th, 1929, and being No. 792, October Term, 1928. The Commission has also again appealed with respect to the proper basis for calculating the annual depreciation allowance, its appeal being No. 826, October Term, 1928.

The transcript of the record of the aforesaid appeal and cross-appeal, Nos. 792 and 826, October Term, 1928, is referred to and adopted as the certified transcript of the record required to be filed under Rule No. 38 of this Court with this petition for writ of certiorari.

B.

Reasons Relied on for the Allowance of the Writ.

1. The decision of the Court of Appeals of Maryland determines a Federal question of substance not heretofore determined by the Supreme Court of the United States,—*i. e.*, whether the Company would be deprived of its property without due process of law, within the prohibition of the Fourteenth Amendment to the Constitution of the United States, by the action of a State regulatory body, (*i. e.*, the Public Service Commission in this case), in calculating the Company's annual allowance for depreciation so as to restore to the Company the cost of its depreciable property consumed or retired in service, rather than the present value thereof.

2. The decision of the Court of Appeals of Maryland, holding, as it does, that the annual depreciation allowance of the Company should be so calculated as to restore to the Company the present value of its depreciable property, instead of the cost thereof, is not in accord with applicable decisions of this Court in cases involving related questions.

3. The decision of the Court of Appeals of Maryland to the effect that the determination of the annual depreciation allowance of the Company so as to restore the cost, rather than the present day value, of depreciable property consumed or retired in service, would deprive the Company of property without due

process of law within the prohibition of the Fourteenth Amendment of the Constitution of the United States, determines a Federal question of substance by a ruling untenable and in conflict with the weight of authority.

4. The Order of the Commission is a "statute" of the State of Maryland within the meaning of Section 237 (b) of the Judicial Code of the United States, as amended by the Act of Congress of February 13th, 1925, (43 Stat. L. 937), and is not invalid, (as held by the Court of Appeals of Maryland), as repugnant to the Constitution of the United States.

WHEREFORE, your petitioners respectfully pray that a writ or certiorari be issued out of and under the seal of this Honorable Court, directed to the Court of Appeals of Maryland, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and titled on its docket, No. 52, April Term, 1928, Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, constituting the Public Service Commission of Maryland, Appellants, v. The United Railways and Electric Company of Baltimore, Appellee, and that the said decree of the Court of Appeals of Maryland may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, Constituting the Public Service Commission of Maryland.

RAYMOND S. WILLIAMS,
THOMAS J. TINGLEY,
Counsel for Petitioner.

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 826.

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND,

Petitioners,

v.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The Opinion of the Courts Below.

The opinion in the Circuit Court No. 2 of Baltimore City will not be officially reported. It appears at page 65 of the Record. The opinions in the Court of Appeals have not been officially reported as yet. But see 142 Atl. 870. The majority opinion is copied at pp. 1622 *et seq.* of the Record, and was filed July 16th, 1928. See also concurring opinion (R. 1653) and dissenting opinions (R. 1655 and 1656 *et seq.*).

The decree of the Circuit Court No. 2 of Baltimore City dismissing the Company's Supplemental Bill of Complaint appears on p. 1705 of the Record, while the opinion and decree of the Court of Appeals affirming this action appear at p. 1712.

II.

Jurisdiction.

1. The date of the decree to be reviewed is July 16th, 1928 (R. 1622, 1653). The final decree entered by the Court of Appeals disposing of the Company's Supplemental Bill of Complaint, is dated March 20th, 1929.

2. The United Railways and Electric Company of Baltimore, hereinafter called the Company, originally appellee and cross-appellant, and subsequently appellant, in the Court of Appeals of Maryland, contended it was confiscatory and contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States for the appellants, constituting the Public Service Commission of Maryland, hereinafter called the Commission, to so fix the annual depreciation allowance of the Company as to restore the original cost, rather than the present day value, of the Company's depreciable property consumed or retired in service, and that the Order of the Commission so fixing the annual depreciation allowance (R. 44 *et seq.*) was therefore invalid as repugnant to the Federal Constitution (R. 9, 10). In other words, the Company contended that the value of depreciable property consumed or retired in service must be restored through the annual depreciation allowance, and that it would otherwise be deprived of its property contrary to the provisions of the Federal Constitution, while the Commission held that the restoration of cost was sufficient and proper. The Court of Appeals of Maryland sustained the contention of the Company (R. 1650).

3. The jurisdiction of this Court is invoked under the provisions of Section 237 (b) of the Judicial Code of the United States, as amended by the Act of February 13th, 1925 (43 Stat. L. 937). The Company attacked the Order of the Public Service Commission fixing its annual depreciation allowance, on the ground that the basing of such an allowance on cost, rather than on value, deprived it of its property without due process of law, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States. The decree of the Court of Appeals sustained this claim of Federal right set up by the Company. The Commission, therefore, is entitled, under Section 237 (b), to make this application for a review of the action of the Court of Appeals by writ of certiorari.

4. Jurisdiction in this Court is believed to be sustained by the doctrine of the following cases:

King Manufacturing Company v. City Council of Augusta, 72 L. Ed. (U. S.) 544.

Ex parte: In the Matter of Thomas E. Williams, Tax Commissioner (May 21, 1928), 72 L. Ed. (U. S.) 591.

While neither of the two cases above cited involved review by certiorari, they sustain the principle that the official order of any regulatory body, such as the Public Service Commission, is a "statute" for jurisdictional purposes, under the United States Judicial Code.

Under Section 237 (b) of that Code, the power of the Supreme Court of the United States to review by certiorari may be exercised as well where the Federal claim is sustained as where it is denied.

5. The decree of the Court of Appeals of Maryland, dated July 16th, 1928, is subject to review in these proceedings, the decree of March 20th, 1929, being final in char-

acter, within the meaning of Section 237 (b) of the Judicial Code.

As Mr. Chief Justice White said in *Louisiana Navigation Co. v. Oyster Commission* (1912), 226 U. S. 99:

> "The rule which excludes the right to review questions arising in a cause depending in a State court until a final judgment is rendered by said court involves as a necessary correlative the power and duty in this court when a final judgment in form is rendered and the cause is brought here for review, to consider and pass upon all the Federal controversies in the cause, irrespective of how far it may be that by the State law such questions were concluded during the litigation, and before a final judgment susceptible of review here was rendered."

6. The decree of the Court of Appeals of Maryland involves a Federal question reviewable by the Supreme Court of the United States.

Article 23, Section 404 of Bagby's Annotated Code of the Public General Laws of Maryland (1924), which is Section 43 of the Maryland Public Service Commission Law (Md. Acts 1910, Ch. 180), provides, in part, as follows:

> "Any corporation subject to this sub-title, or any of the provisions of this sub-title, and any person in interest being dissatisfied with any order of the Commission, fixing any rate or rates, tolls, charges, schedules, joint rate or rates, or any order fixing any regulations, practices, acts or service, may commence any (an) action in the Circuit Court for any county, or before any judge of the Supreme Bench of Baltimore City, in any court of Baltimore City of appropriate jurisdiction which may be adopted for the purpose, against the commission as defendant to vacate and set aside any such order on the ground that the rate or rates, tolls, charges, schedules, joint rate or rates, fixed in such order is *unlawful*, or that any such regulation, prac-

tice, act or service fixed in such order is *unreasonable*, in which action a copy of the complaint shall be served with the summons." (Italics ours.)

The functions of the Maryland courts in reviewing a decision of the Commission are accordingly limited to the question of whether it is unlawful or unreasonable, or both:

> "The first rule is, the order will not be disturbed except upon clear and satisfactory evidence that it is unreasonable or unlawful. This is a legislative mandate which is reinforced by the fact that the Commission is a tribunal erected by law, informed by experience, and assisted by a trained corps of subordinates."
>
> *Public Service Commission v. Byron* (1927), 153 Md. 464.

It will be noted that the statutory provision in terms purports to limit review of rate-fixing orders to the question of *lawfulness*. No such limitation has been imposed in its judicial construction, however. In the case above cited, the Maryland Court of Appeals held that the Commission has

> "an indivisible power to pass lawful and reasonable orders in the performance of its statutory duties."

In *Interstate Commerce Commission v. Union Pacific Railroad Company* (1912), 222 U. S. 541, cited with approval as to this point by the Court of Appeals in the *Byron* case, *supra*, the content and limits of the two words above used were indicated. At page 547, Mr. Justice Lamar said:

> "In cases thus far decided, it has been settled that the orders of the Commission are final unless (1) beyond the power which it could constitutionally exercise; or (2) beyond its statutory power; or (3) based upon a mistake of law. But questions of fact may be involved in the determination of questions of law, so that an order, regular on its face, may be set aside if it appears that (4) the rate is so low as to be confisca-

tory and in violation of the constitutional prohibition against taking property without due process of law; or (5) if the Commission acted so arbitrarily and unjustly as to fix rates contrary to evidence, or without evidence to support it; or (6) if the authority therein involved has been exercised in such an unreasonable manner as to cause it to be within the elementary rule that the substance, and not the shadow, determines the validity of the exercise of the power."

The situations assumed in divisions (5) and (6) of the foregoing outline are instances of an unreasonable, as distinguished from a merely unlawful, order. The use of the word "unreasonable" in the statute does not mean that the Court will substitute its judgment for that of the Commission.

> "If the order be found such that reasonable men might well differ as to its correctness, it cannot be said to be unreasonable."
>
> *M., St. P. & S. S. Ry. v. R. R. Comm.,* 136 Wis. 146, cited with approval in the *Pennsylvania Railroad Company* case, *infra.*

The Court of Appeals, in the case of *Pennsylvania R. R. Co. v. Public Service Commission,* said (126 Md. 59, at 78):

> "The whole duty, power and function of the Court in such cases was well summed up by Chief Justice White in *Ill. Cent. R. R. v. Int. Com. Comm.,* 215 U. S. 470, when he said:
>
> " 'Beyond controversy, in determining whether an order of the Commission shall be suspended or set aside, we must consider (a) all relevant questions of constitutional power or right; (b) all pertinent questions as to whether the administrative order is within the scope of the delegated authority under which it purports to have been made, and (c) proposition that we state independently, although in its essence it may

be contained in the previous one, viz., whether although the order may be in form within the delegated power, nevertheless it must be treated as not embraced therein, because the exertion of authority which is questioned has been manifested in such an unreasonable manner as to cause it in truth to be within the elementary rule, that the substance and not the shadow determines the validity of the exercise of the power. Plain as it is that the powers just stated are of the essence of judicial authority, and which, therefore, may not be curtailed and whose discharge may not be by us in a proper case avoided, it is equally plain that such perennial powers lend no support whatever to the proposition that we may, under the guise of exerting judicial power, usurp merely administrative functions, by setting aside a *lawful* administrative order upon our conception as to whether the administrative power has been *wisely* exercised.' " (Italics ours.)

And the Court of Appeals of Maryland said in the *Byron* case, *supra*:

"When such a question reaches an appellate tribunal for review in an effort to have the order annulled, the court has no power to substitute its own judgment for that of the Commission, and unless it be made to appear by clear and satisfactory evidence that the order was unreasonable, the courts are powerless to set it aside on that ground."

There is, then, a *prima facie* presumption of reasonableness of the action of the Commission, provided that the action be lawful. Once the lawfulness be established, the Court will not substitute its judgment for that of the Commission, or interfere with the order unless it is manifestly arbitrary. And the arbitrary character must be established by evidence. But if the order be unlawful, by reason, for instance, of repugnance to the Federal Constitution, it might

be said by the Court, as was done in this case, to be unlawful and unreasonable, because unlawfulness is found as a matter of constitutional right, and unreasonableness, assuming the hypothesis of unconstitutionality, follows.

The decision of the Court of Appeals does not rest, as a self-sufficient and independent ground of judgment, on a determination that calculating the annual depreciation allowance so as to restore cost, and not value, of depreciable property, is *unreasonable*. It turns, not on an analysis of testimony, but on a question of law. The Court, after criticising the action of the Commission in *basing* the annual depreciation allowance on gross revenues of the Company, said:

> "But even so, if the conclusion actually reached was proper, the fact that it was reached by improper methods, would not justify us in disturbing it, so that the more important question is whether the base of the calculation by which it was tested (the restoration of cost, not value, of depreciable property consumed or retired in service), was itself *lawful.*" (Italics ours.) (R. 1649.)

As to this, the Court said that it involved

> "substantive rights protected by constitutional guaranties" (R. 1648), and that "to require the Company to sell its service at rates which made no provision at all for the replacement or repair of the property when worn out or obsolete, would be plain confiscation, and to require it to sell it at rates that make an inadequate provision for the return of its value when worn out or obsolete as a result of public service, can be no less" (R. 1650).

Any incidental imputation of unreasonableness in the opinion of the Court is predicated upon an assumption of unlawfulness, *i. e.*, unconstitutionality. The Court did not rest its opinion upon this ground as an independent base,

nor consider the question in such a manner that it could have done so.

> "The mere ruling that there was evidence sufficient to authorize the consideration of the case from the point of view of negligence alone affords no basis for saying that the case was decided on such ground. Mere conjecture may not be indulged in for the purpose of concluding that because there was a potentiality of considering the case from a non-Federal point of view, therefore it was considered and decided in that aspect."
>
> *St. Louis, I. M. & S. R. Co. v. McWhirter* (1913), 229 U. S. 265.

Obviously, the question of the lawfulness of the order in this case *includes* the question as to whether the order is invalid, as a matter of law, under the provisions of the Fourteenth Amendment to the Constitution of the United States. As a matter of fact, the constitutional validity of the order was the *only* question considered by the Court in connection with the *lawfulness* of the order. The opinion is expressly based upon a finding of confiscation, and predicated upon an assumption of the existence of constitutional guaranties. The finding of unlawfulness is tantamount, and only tantamount, to a finding of unconstitutionality.

The Company attacked the order as repugnant to both the Federal and State Constitutions. Article 23 of the Maryland Declaration of Rights (Bagby's Annotated Code of the Public General Laws of Maryland, 1924, Vol. 1, p. 57), provides:

> "That no man ought to be taken, or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the Land."

This is the only applicable section of the Maryland Con-

stitution. It is coextensive with the Fourteenth Amendment to the Federal Constitution, *Niles, Maryland Constitutional Law*, p. 46. The Court might have rested its decision on either the Federal or the State Constitution, or both. Either, alone, would have been sufficient. The Federal Constitution was, of course, of paramount sanction. For that reason, apparently, the decision is predicated on the Fourteenth Amendment alone. For that amendment is referred to throughout the opinion, while Article 23 of the Declaration of Rights is never mentioned.

It is well settled that where the State court bases its decision in part on non-Federal grounds, which are in themselves broad enough to sustain it, a Federal question presented by the case will not be reviewed by the Supreme Court of the United States, *Consolidated Turnpike Co. v. Norfolk and Ocean View Ry. Co.* (1913), 228 U. S. 596, even though the decision on the non-Federal ground be deemed erroneous. *Arkansas S. R. Co. v. German National Bank* (1907), 207 U. S. 270. And where it does not appear on which of two grounds the judgment was based, and the non-Federal ground is a good and valid one, sufficient in itself to sustain the judgment, the Supreme Court will not review the decision. *Klinger v. Missouri* (1871), 80 U. S. 257.

But the mere fact that the decision *might have been* rested on non-Federal grounds, does not preclude review. *Henderson Bridge Co. v. City of Henderson* (1899), 173 U. S. 592.

In the present case, the State Court might have based its action on non-Federal grounds. It does not appear that it did so. Virtually its sole inquiry was as to the *lawfulness* of the order; it tested that by constitutionality; and its only references indicating detailed judicial consideration are to the Fourteenth Amendment to the Constitution of the United States. Certainly there is no indication that the Court regarded any independent and non-Federal ground as a separate and sufficient basis for its decree.

It may be noted in passing that some doubt might be entertained as to the validity of such State grounds, under the Federal Constitution, even had they been advanced as an independent basis for the opinion. *Georgia Railway and Power Co. v. Railroad Commission of Georgia* (U. S. D. C. N. D. Ga. N. D.—Master's Report, 1924), P. U. R. 1925 A, 546, at 595. But no such question is presented. The decision is rested on a Federal ground, and is a proper subject for review by this Court.

7. The Public Service Commission of Maryland has the legal capacity to prosecute this application for a writ of certiorari, to review the decision against it by the Court of Appeals of Maryland. See the following cases:

Blodgett v. Silberman (April 16, 1928), 72 Law Ed. 470, at 472:

In this case the State Tax Commission of Connecticut computed a transfer tax on certain property owned by a resident of Connecticut, which property, however, was physically located in New York. The highest Court of Connecticut held that certain items of such property were not subject to the Connecticut transfer tax because they were not within the taxable jurisdiction of Connecticut, and, therefore, could not be taxed by that State without violating the Fourteenth Amendment to the Federal Constitution. The State Tax Commission thereupon applied for and was allowed a writ of certiorari from the Supreme Court of the United States, to review the adverse action of the highest State Court. The Supreme Court granted the writ and decided the case on the merits; thereby necessarily holding that such a State official had a standing to question in this Court, the decision of the highest Court of his State.

Nor does this case fall within the line of decisions in which the right of public officers and public bodies exer-

cising ministerial functions, to review in the Supreme Court of the United States adverse rulings of the highest Court of the State, under certain circumstances, has been questioned.

Braxton County Court v. West Virginia (1908), 208 U. S. 192.

The rule in question only applies where the officer or body seeking the review does not occupy a representative capacity with respect to the interests which he is seeking to protect.

Board of Liquidation v. Louisiana (1901), 179 U. S. 622.

The Maryland Public Service Commission has been designated by the Court of Appeals of Maryland as

> "the statutory public defender or representative of all interests, save those which are participating in the attack upon the order, since any one not objecting becomes through acquiescence identified with the public, whose rights and interests always are the primary concern of the Commission, which at once asserts and protects them through its official position."

Public Service Commission v. Byron (1927), 153 Md. 464, at page 471.

III.

Statement of the Case.

A full statement of the case has been given under heading A in the petition for a writ of certiorari, and, in the interest of brevity, the statement is not repeated at this point.

IV.

Specification of Errors.

1. The Court of Appeals erred in not reversing the decree of the Circuit Court No. 2 of Baltimore City, dated May 11, 1928, in so far as said decree adjudged and decreed that the annual depreciation allowance of The United Railways and Electric Company of Baltimore, fixed by Order No. 12639 of the Public Service Commission of Maryland, passed on February 10, 1928, should be calculated to restore to the said Company the present value of its depreciable property, and that calculating said allowance so as to restore to the Company the cost of its depreciable property (as was done by the said Commission in the said Order), was confiscatory, and deprived the Company of its property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States.

2. The Court of Appeals of Maryland erred in holding that the annual depreciation allowance of The United Railways and Electric Company of Baltimore, fixed by the Order No. 12639 of the Public Service Commission of Maryland, passed on February 10, 1928, so as to restore to the Company the cost of its depreciable property, and not the present value thereof, was confiscatory, and deprived the Company of its property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States.

V.

ARGUMENT.

Summary of the Argument.

Point A—This Court has not decided the question as to whether an annual depreciation allowance of a public utility

should be based on the cost of its depreciable property or on the present value thereof. We submit that it is of great public importance that this Court should determine the question here raised.

Point B—The decision of the Court of Appeals is at variance with the decisions of this Court in cases involving related questions.

Point C—The decision of the Court of Appeals is contrary to the weight of authority. It is contrary to the practice of the Interstate Commerce Commission and to the practically unanimous holdings of State regulatory bodies. It is supported by but two State Court cases and one District Court case.

POINT A.

This Court has not decided the question as to whether an annual depreciation allowance of a public utility should be based on the cost of its depreciable property or on the present value thereof. We submit that it is of great public importance that this Court should determine the question here raised.

The question presented is one of substance. It may affect the depreciation allowance, and, potentially, the rate structure, of every utility subject to regulation. In view of the abnormal advances in prices during the last fifteen years, millions of dollars, in the case of some single utilities, are involved in its determination. In the present case, its decision affects the rates of fare charged by the Company to the public of the City of Baltimore.

The question has not been determined by this Court.

In the proceedings below, the Company contended that this Court had, in the following cases, ruled that a utility's annual allowance for depreciation must be so calculated as

to restore the value of property consumed or retired in service:

Knoxville v. Knoxville Water Co., 212 U. S. 1, 13-14;
Minnesota Rate Cases, 230 U. S. 352, 452;
Southwestern Bell Telephone Co. v. Public Service Commission, 262 U. S. 276;
Bluefield Water Co. v. Public Service Commission, 262 U. S. 679;
Brush Electric Company v. Galveston, 262 U. S. 443;
Georgia Railway and Power Company v. Railroad Commission of Georgia, 262 U. S. 625.

In none of these cases was the point involved in this petition directly or indirectly involved or decided.

In the *Knoxville Case, supra*, it was contended by the utility involved that in fixing the value of its property on which it was entitled to earn a fair return, the amount of depreciation suffered in the past and not provided for in the depreciation allowance should be added to the rate base. This claim was, of course, rejected by this Court, which in that connection used the following language:

> "Before coming to the question of profit at all the company is entitled to earn a sufficient sum annually to provide not only for current retirements, but for making good the depreciation and replacing the parts of the property when they come to the end of their life. The company is not bound to see its property depreciate without making provision out of earnings for its replacement. It is entitled to see that from earnings the value of the property invested is kept unimpaired, so that at the end of any given term of years the original investment remains as it was at the beginning. It is not only the right of the Company to make such provision but its duty to its bond and its stockholders and in the case of public service corporations at least, its plain duty to the public."

It is submitted that this Court was clearly dealing with accrued depreciation, and the right to add it, to the extent it had not been provided for through an annual allowance, to the rate base. The point presented by this petition was not before the Court. The Company, below, contended that the sentence "it is entitled to see that from earnings the *value* of the *property invested* is kept unimpaired, so that at the end of any given term of years the original investment remains as it was in the beginning" means that *property invested,* and not money originally invested, must be returned to the utility through the annual depreciation allowance. There are plain answers to this construction. It does violence to the natural meaning of the words used. The Court speaks of *original investment,* which could not, by any possibility, be held to intend original investment as modified by a subsequent valuation proceeding. Furthermore, the Court, in a subsequent passage in the opinion, used the word "investment" in a context clearly indicating it denoted financial investment, or cost. It said:

> "If, however, the Company fails to perform this plain duty and to exact sufficient returns to keep the investment unimpaired, whether this is the result of unwarranted dividends upon over issues of securities or of omission to exact proper prices for the output, the fault is its own."

The Company, below, also relied on the following quotation from the *Minnesota Rate Cases, supra,* in support of its contention that this Court had held that the depreciation allowance must restore value of property:

> "The property is held in private ownership and it is that property, and not the original cost of it, of which the owner may not be deprived without due process of law."

The quoted language was used, however, with respect to the determination of the utility's rate base. The question

here under consideration was neither discussed nor decided.

In dealing with the effect of the four remaining cases above cited, it must be borne in mind that there is a difference between the *object* of a depreciation allowance, *i. e.*, whether to restore cost or value,—and the *method* employed for arriving at that allowance. The Commission in the present case adopted the *method* of applying a percentage to gross revenues to determine the amount of the Company's annual depreciation allowance, but its *object* was to restore the cost of property consumed or retired in service. Sometimes courts and commissions lump depreciation with the rate of return allowed on the fair value of the property, and express both, without distinction as to amount, as a percentage of that value. This method was adopted in the *Southwestern Bell Telephone Case, supra,* and the *Bluefield Case, supra.* In the *Brush Electric Company Case* and the *Georgia Railway Case, supra,* the allowance for depreciation was expressd as a separate percentage of the value of the properties of the utilities in question. But although the depreciation allowances in these cases, doubtless as a matter of convenience, were *based on* the valuation, as a *method* of determining the annual depreciation allowance, it nowhere appears that the *object* of the allowance was to *restore* the *value* of property consumed or retired in service, or that the allowance granted actually did so. Certainly these cases do not support the contention that, as a matter of constitutional right, the depreciation allowance must restore the value of property. In none of the cases was the point here under discussion raised or dealt with. In probably the greater number of utility rate cases that have come before this Court for review, if not [redacted] in all of them, the object of the depreciation allowance granted has been to restore the cost of property consumed or retired in service. Never has this met with the criticism of this Court. Indeed, as will be seen hereinafter, it has been approved by it.

POINT B.

The decision of the Court of Appeals is at variance with the decisions of this Court in cases involving related questions.

In so far as the case of *Knoxville v. Knoxville Water Company,* 212 U. S. 1, may be regarded as dealing with the question here at issue, by inference from the language there employed, it negatived value, and sustained cost, as the amount to be returned by the annual depreciation allowance. The language above quoted from the opinion lends itself to that construction, and the case has been so construed by other courts having occasion to pass on the matter here at issue.

It has been noted that the case of *Georgia Railway and Power Company v. Georgia Railroad Commission,* 262 U. S. 625, was relied on by the Company, below, as supporting the contention that value of property consumed or retired in service must be restored by the annual depreciation allowance. And yet, after that case had been decided by this Court, and further proceedings were held in the District Court, the case was referred to a Master, whose report reached the conclusion that the question was undetermined by this Court; and that cost of such property, and not value, must be restored; and cited the *Knoxville Case* as authority for that position.

In *Georgia Rwy. and P. Co. v. R. R. Comm.* (U. S. D. C. N. D. Ga. N. D.), P. U. R. 1925 A, 546, at 593, he said:

> "Only two figures are submitted as proper reserve for replacement: $113,563 by Professor Riggs and $150,000 by Mr. Luick. The Commission, as its report shows, took 2 per cent. on the 'undepreciated fair value' of the physical properties as a proper allowance for this item, and *fixed that value at historical cost.* (Italics ours.) Mr. Luick estimated 2 per cent. of the depreciable physical properties, excluding land, as the proper basis on which to arrive at reserve for replacement. Neither the Special Tribunal nor the Supreme Court

made a definite ruling on this question, but neithe
Court disturbed the amount of reserve as found by th
Commission. The fixing of this figure does not, i
seems to the Master, involve valuation, but an esti
mated allowance for the purpose of preserving the in
vestment. In valuing the property, present valu
should be found, but the reserve should be applied t
the investment, rather than the present value figure
since the reserve ought to be, and is, on principle, cre
ated to keep the investment intact.

"The Supreme Court in Knoxville v. Knoxvill
Water Co., 212 U. S. 1, 13, in discussing this questio
says:

" 'The Company is not bound to see its property
gradually waste without making provision out of earn
ings for its replacement. It is entitled to see that from
earnings the value of the property invested is kept
unimpaired, so that, at the end of any given term of
years, the original investment remains as it was at the
beginning.'

"* * * It has been well said that 'The full value of
the investment can be maintained provided there is
restored to the Company each year such sums of money
that, when each item of the plant can be no longer
used, there will be in the possession of the company—
money and useful plant or useful plant alone, equal
in value to its original cost.' (Hayes on 'Public Utili-
ties, Their Fair Present Value and Return,' page 33.)

"Lyndon in his book on 'Rate Making for Public
Utilities,' page 17, says:

" 'Depreciation reserve is a fund, the sole purpose
and use of which is to preserve the integrity of the
original investment required to produce the operating
plant.'

"Hayes, again, in his 'Public Utilities, Their Fair
Present Value and Return,' on page 162, in discussing
this question, says:

" 'It is usual to set aside each year a portion of their

cost, so that, when an item has reached the end of its life and must be removed, there has been reserved an amount equal to its original cost.'

"To allow a reserve which, during the estimated life of the plant, would amount to more than the original investment, would be to give the utility, out of rates collected from the public, not only a reserve sufficient to keep its investment 'unimpaired, so that at the end—the original investment remains as it was at the beginning,' but additional capital also. The utility should be allowed reserve for replacement sufficient to keep the investment unimpaired, and, in addition, a fair return upon the present value of the property, but the public should not be required to build up, in the form of maintenance reserve, additional capital for the utility. The Master does not agree that 2 per cent. on the undepreciated present value of the depreciable physical properties is the proper amount to allow for reserve in this case. To allow reserve on this basis would, to the extent of the additional capital furnished by the public, amount to the confiscation of the property of the users of gas."

It is submitted that not only has this Court never announced the rule laid down by the Court of Appeals of Maryland in the instant case, but that the decision of the Court of Appeals of Maryland is contrary to the spirit and intendment of decisions of this Court, as the same have been judicially interpreted.

POINT C.

The decisions of the Court of Appeals is contrary to the weight of authority. It is contrary to the practice of the Interstate Commerce Commission and to the practically unanimous holdings of State regulatory bodies. It is supported by but two State Court cases and one District Court case.

Knoxville v. Knoxville Water Company, 212 U. S. 1, and *Georgia Railway and Power Company v. Georgia Railroad*

Commission (U. S. D. C. N. D. Ga. N. D.), P. U. R. 1925 A, 546, have already been cited as expressing the conclusion reached by the overwhelming majority of well-considered cases,—that cost, and not value, should be restored by the annual depreciation allowance.

The following decisions support that practice, which has developed and been in force for decades of regulatory experience, is embodied in the Rules of Accounting of the Interstate Commerce Commission and of most State regulatory bodies, and has seldom been questioned by any utility affected.

Re Missouri Union Telephone Co. (Mo. P. S. C.), P. U. R. 1926 A, 842, at 849:

> "In calculating the annual depreciation allowance, it must be borne in mind that the purpose of a depreciation reserve is to retire the investment in depreciable property at the end of its useful life. The depreciation reserve is a retiral reserve, and not a replacement reserve. Consequently, any estimate of the annual depreciation requirement should be based upon the investment in depreciable property. Should the cost of a new item of property exceed the cost of the item of property displaced, the excess is properly chargeable to capital account; and such excess must ultimately be provided for through the sale of stocks or bonds or both. The creation of a reserve in excess of the amount required to retire the investment in depreciable property at the end of its life results in collecting an excess sum from the consumer to finance additions and betterments in full or in part, which is unjust, inequitable and illegal. The point to be emphasized is that no matter what the present fair value of a property may be, or what its cost of reproduction may be, the actual cost of the depreciable property is

the basis upon which the annual depreciation requirement should be calculated."

See also—

Re Capital City Water Co. (Mo. P. S. C.), P. U. R. 1925 D, 41, at 56;

Re Kansas City Gas Co. (Mo. P. S. C.), P. U. R. 1925 A, 653, at 663.

Re Jackson County Light, Heat and Power Co. (Mo. P. S. C.), P. U. R. 1926 D, 737, at 754:

"In calculating the annual depreciation allowance, it must be borne in mind that the purpose of a depreciation reserve is to retire the investment in depreciable property at the end of its useful life. The depreciation reserve is a retiral reserve and not a replacement reserve. Consequently, any estimate of the annual depreciation requirement should be based upon the investment in depreciable property."

Aluminum Goods Mfg. Co. v. Laclede Gas Light Co. (Mo. P. S. C.), P. U. R. 1927 B, 1, at 43:

"The purpose of a depreciation reserve is to retire the actual cost of the depreciable property at the end of its useful life. It, therefore, follows that the annual depreciation allowance should be based upon the original cost of the depreciable property."

Re Kinloch-Bloomington Teleph. Co. (Ill. Commerce Comm.), P. U. R. 1927 E, 135, at 142:

"Without going into a detailed discussion of this matter, it might be said that the purpose of the reserve and the accounting rules of this Commission and the Interstate Commerce Commission precludes setting aside a depreciation reserve based on present day cost. According to accepted theories, the amount that should be provided for in the reserve is the original cost of the property in service. When replacements are

made, the difference between the original cost of property retired and the present day cost of that installed is an addition to capital account. If the books of the Company have been accurately and properly kept, and this has continued since the conception of the Company, then the original cost of the property should be identical with the book cost, and by retiring the original cost of any item or items of property from the record, the figures still remaining on the books would accurately reflect the original cost of the property remaining in plant. It is not the purpose of the reserve to produce capital, but simply to protect the capital invested in the property, and in arriving at the amount that should be set aside annually as a reserve for accruing depreciation, an estimate based on the present cost of the property should receive little or no weight in such consideration."

Freeport v. Freeport Gas Co. (Ill. Commerce Comm.), P. U. R. 1924 E, 99, at 103:

"That a public utility is not required to see its property depreciate without making a provision to offset such depreciation is a point which has been clearly settled by the United States Supreme Court.

"As this Commission understands the law, the utility is required annually to set aside a sum which is sufficient to replace the cost of the property at the expiration of its useful life; and in speaking of the cost, the Commission refers to the actual original cost of each unit in operation. This is the manner in which the Commission's uniform classification of accounts for utilities directs the accumulation of depreciation reserve. The Commission, therefore, in this case will fix the allowance for the annual depreciation on the original cost of the property."

Re Rockford Gas Light and Coke Co. (Ill. Commerce Comm.), P. U. R. 1922 E, 756, at 761:

"The Commission is of the opinion that the annual accruing depreciation should be based on the original cost of the property rather than on the reproduction cost, as submitted by the petitioner, because it is the original cost of the property which must be accumulated to safeguard the investment for the investor. This is the method contemplated by the uniform system of accounts—as adopted by the Commission * * *."

Re Rockford Electric Co. (Ill. Commerce Comm.), P. U. R. 1925 D, 154, at 166:

"Witnesses for the utility contended that the annual retirement allowance should be based on the reproduction cost of the property. This is a proposition to which the Commission does not agree. The classification of accounts prescribed for electric utilities contemplates the retirements of property shall be made at their original cost and that replacements, if costing more than the property retired, shall be added to the capital account at the difference between replacement and original cost. An allowance for annual retirement expense must, therefore, be based upon the original cost of the property and not upon the reproduction cost."

Baird v. Burleson (N. Y. P. S. C. 2nd Dist.), P. U. R. 1920 D, 529, 538:

"An official of the Company testified that in computing the annual depreciation the value is computed not on the book cost, but on an estimated reconstruction cost. The more usual method is to adopt as the retirement loss the difference between the original cost and the salvage value.—This (the Company's method) is not the method contemplated in the Commission's accounting classifications, and we consider it objection-

able in that it does not apportion the retirement loss equitably as between the present and future users of the service, and introduces an additional element of conjecture by requiring an estimate of future replacement cost as well as of probable life in service."

Milwaukee Electric R. & L. Co. v. Milwaukee (Wis. R. R. Comm.), P. U. R. 1918 E, 1, at 58:

"As we understand it, a reserve set up to provide for the renewal of property should provide amounts sufficient to protect the utility from loss when property is retired from service. This is equivalent to saying that the amount of the reserve to be provided should be equal to the cost of the property which will have to be replaced, and not the amount of an estimated cost of reproduction of that property."

Re Wisconsin-Minnesota Light and P. Co. (Wis. R. R. Comm.), P. U. R. 1920 D, 428, at 435:

"The question of depreciation reserves was discussed at length in the case of Milwaukee Electric R. and Light Co. v. Milwaukee, 21 Wis. R. C. R., pp. 28-31, inclusive (P. U. R. 1918 E, 1). We call attention at this time to the fact that the Commission there showed its reasons for its conclusions on the question of depreciation and that it was then the opinion of this Commision that it should, as has in fact been the practice of the Commission at all times, establish depreciation reserves upon the original cost basis or upon a basis as near thereto as could be ascertained. It was there said:

" ' * * * Depreciation reserve, however, should be set aside not on the basis of such variation, but with relation only to the original cost or investment, any excess cost in renewals and replacements over and above original cost finally to go to capital account.' "

Re Butler Telephone Co. (Ind. P. S. C.), P. U. R. 1927 C, 800 at 804:

"The Commission believes that one purpose of book cost being kept, so as to be actually an historic cost of the property, is that retirements on account of depreciation may be made at cost of installation rather than at appraised cost of reproduction. At the present time, this is fair to the patrons of the utility. In the future, the appraised cost of reproduction may be less than the actual cost of installation. This result is very probable as to installations made during the period of peak prices. In that event, fairness to the company would require that the same rule be followed."

Re Lebanon Teleph. Co. (Ind. P. S. C.), P. U. R. 1925 B, 225, at 229:

"Depreciation should be calculated on the actual or book cost of the property excluding land."

See also—

Re Indianapolis Water Co. (Ind. P. S. C.), P. U. R. 1925 C, 431 at 438.

Re Butler Telephone Co. (Ind. P. S. C.), P. U. R. 1925 A, 240, at 242:

"The accrual of depreciation on a reproduction basis is improper. The accrual should be made on the basis of the cost of the property."

Re Coast Gas Co. (N. J. Bd. of P. U. C.), P. U. R. 1923 A, 349, at 366:

"The Board's uniform system of accounts—provides that 'when anything (not including minor parts, the renewal of which is considered a repair) is withdrawn or retired from service, the amount at which it stood charged shall be credited to the account in which it stood charged at the time of withdrawal.' The same

uniform system requires that the original entries should be the actual money cost of the property; it is evident that the retirement is to be based upon the money or investment cost of property, and should not be largely increased through being related to varying appraised values."

Re Elizabethtown Water Co. (N. J. Bd. of P. U. C.), P. U. R. 1927 E, 39, at 63:

"The annual depreciation, however, should be related to the book or investment cost."

Re Duluth Railway Co. (Minn. R. R. and W. Comm.), P. U. R. 1927 A, 41, at 53:

"The purpose of setting up depreciation is to restore investment."

Re Big Spring Electric Co. (Utah P. S. C.), P. U. R. 1927 A, 655, at 666:

"It appears to the Commission that in this case it is proper to apply depreciation on the investment, rather than reproduction value."

Re Phillipine Shipowners' Association (P. I. P. S. C.), P. U. R. 1921 C, 536:

"With regard to the basis for computing the percentage of depreciation, the Commission maintains that it must be the cost of the investment, because if the theory sustained in this respect by the counsel for the petitioning shipowners in their reply (cost of replacement basis), above referred to, were to be accepted, the burden of the capitalization of the business of the petitioning shipowners would be thrown upon the public, while the principal purpose of writing off the depreciation is to return to them their capital investment within a period of time estimated by the life of the property used for the public service."

The practice of the Interstate Commerce Commission is at variance with the ruling of the Maryland Court of Appeals. See Depreciation Charges of Telephone Companies and Depreciation Charges of Steam Railroad Companies, 118 I. C. C. 295, at page 344. It is there said:

> "It is agreed by all that depreciation expense should be based primarily upon the original cost to the accounting company of the unit of property in question. The principle is precisely the same in the case of the expense incurred over a period of years in the consumption of long-lived property in service, as it is in the case of the expense incurred in the more immediate consumption of such property as coal. In both cases, the cost of the property in question is the basis of the charge to operating expenses."

See also *Whitten-Wilcox, Valuation of Public Service Corporations* (2nd Edition, 1928), Vol. 2, p. 1829, where the practice of the American Telephone and Telegraph Company is thus described:

> "(a) Accruals should be based on original cost or investment.
>
> "All telephone property, excepting land, is subject to depreciation and the continual consumption of the investment is a part of the cost of the service and must be provided for by charges against earnings.
>
> "The sound theory is that the charges to the reserve for depreciation should be based on the original cost of the property retired, less the net salvage credit. This is demonstrated by the following considerations:
>
> "(1) The function of the depreciation reserve is to amortize the portion of the expense of conducting the business caused by using up its depreciable property.
>
> "(2) The actual amount of this expense is the original cost of its property less net salvage credit.
>
> "(3) This method is equitable in that it provides for

the amortization of the actual investment during the period it is consumed in rendering the service.

"(4) Upon this theory the amount to be created by the reserve is definite and fixed so that the periodical charges to operating expenses on account of the reserve can be made certain.

"(5) This method tends to certainty and definiteness in the accounting."

It is true that there are cases to the contrary, and for the information of the Court we cite them:

United Fuel & Gas Co. v. R. R. Commission (1925), 13 Fed. (2nd) 510 (District Court, Kentucky);

Michigan Public Utilities Com. v. Michigan State Telephone Co. (1924), 228 Mich. 658;

Cincinnati & Suburban Bell Telephone Co., P. U. R. 1924 E, 849 (1924 Ohio Public Utilities Commission);

Hopkins v. Southwestern Bell Telephone Co. (1924), 115 Kan. 236.

In the case first cited the Court was dealing with a natural gas company and the question of depreciation was intermingled with the question of *depletion*. The Court's conclusion is not supported by the citation of any authority, and *the Supreme Court cases relied on by our opponents are not even mentioned.*

It will be noted that all of these cases were decided before November 2, 1926, the date of the report of the Interstate Commerce Commission above referred to, and were thus available to it before it reached its conclusion. The Interstate Commerce Commission did not, therefore, regard them as authoritative.

Finally, if the method contended for by the Public Service Commission in this case results, as claimed, in a continuous confiscation of the property of the Railways Com-

pany, why, it may be asked, did the American Telephone & Telegraph Company and the steam railroads of the United States strenuously contend before the Interstate Commerce Commission that retirements should be written off at cost figures instead of valuation figures?

The above decisions and practices are founded upon the fact that if the public were to be required to restore to the utility through the annual depreciation allowance the value, rather than the cost, of depreciable property consumed or retired in service, it would be compelled to contribute new capital to the Company to the extent of the excess of cost of replacement of new property acquired over the original cost of old property retired, and would in turn be required to pay a fair return on the new capital so contributed. Such a concept is wholly at variance with the fundamental theories of regulation, whereunder the utility dedicates property provided by it to the public use, and the public pays a return for the use of that property.

CONCLUSION.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, in order that the provision of the decree of the Court of Appeals of Maryland herein, holding that the failure of your petitioners, constituting the Public Service Commission of Maryland, to grant to the United Railways and Electric Company of Baltimore, appellee and cross-appellants therein, an annual depreciation allowance that would restore to it the present day value of its property consumed or retired in service, is confiscatory within the prohibition of the Fourteenth Amendment to the Constitution of the United States, may be set aside, and that to

such an end a writ of certiorari should be granted and this Court should review the decision of the Court of Appeals of Maryland, and finally reverse it.

RAYMOND S. WILLIAMS,

THOMAS J. TINGLEY,

Counsel for Petitioners.

Baltimore, Maryland,

April 27th, 1929.

FILE COPY

Office Supreme Court, U.
FILED
MAY 11 1929
CHARLES ELMORE CROP
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 64

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND,
Cross-Appellants and *Petitioners,*

vs.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE,
Cross-Appellee and *Respondent.*

CROSS-APPEAL FROM AND PETITION FOR CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

OPPOSING STATEMENT OF THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, CROSS-APPELLEE AND RESPONDENT, AS TO JURISDICTION ON CROSS-APPEAL OR CERTIORARI.

CHARLES MCHENRY HOWARD,
CHARLES MARKELL,
HENRY H. WATERS,
Counsel for The United Railways and Electric Company of Baltimore, Cross-Appellee and Respondent.

CASES CITED.

PAGE

Blodgett vs. Silberman, 277 U. S. 1 4

Newark vs. New Jersey, 262 U. S. 192 4

Pawhuska vs. Pawhuska Oil & Gas Co., 250 U. S. 394 4

Public Service Comm. vs. United Rwys. Co., 155 Md. 572 2

Staten Island Rapid Transit R. Co. vs. Transit Commission, 276 U. S. 603 4

Trenton vs. New Jersey, 262 U. S. 182 4

United Railways and Electric Co. vs. West, 278 U. S. , 49 S. Ct. 79 3

West vs. United Railways and Electric Co., 278 U. S. , 49 S. Ct. 79 3

STATUTES CITED.

1925 Feb. 13, C.229, 43 Stat. 936 (Section 237(a) of the Judicial Code) 2

1925 Feb. 13, C.229, 43 Stat. 936 (Section 237(b) of the Judicial Code) 2, 3

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 826.

HAROLD E. WEST, CHAIRMAN, AND J. FRANK HARPER AND STEUART PURCELL, MEMBERS, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND,
Cross-Appellants and *Petitioners,*

VS.

THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE,
Cross-Appellee and *Respondent.*

CROSS-APPEAL FROM AND PETITION FOR CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

OPPOSING STATEMENT OF THE UNITED RAILWAYS AND ELECTRIC COMPANY OF BALTIMORE, CROSS-APPELLEE AND RESPONDENT, AS TO JURISDICTION ON CROSS-APPEAL OR CERTIORARI.

The cross-appellants and petitioners, the Public Service Commission of Maryland, will be called the Commission; the cross-appellee and respondent The United Railways and Electric Company of Baltimore, will be called the Company.

The Commission seeks review, on cross-appeal and/or certiorari, of certain action on one question, viz., whether, on an issue of confiscation *vel non*, the Company's annual depreciation allowance should be based on present value or on cost of depreciable property. The Company has no desire to evade review of this question; indeed, the same question will doubtless be raised by the Commission in any event as part of the question of confiscation on the Company's appeal. The Company, however, has no power to confer jurisdiction on this Court by consent. It would seem that the Company ought to make some statement of its position as to jurisdiction.

Unless the Company's appeal under section 237(a) [October Term, 1928, No. 792] carries with it jurisdiction to review on cross-appeal any action reviewable on certiorari, this action as to depreciation could in any event, where the federal claim has been sustained, be reviewed only on certiorari under section 237(b). Whether this action, if reviewable, is reviewable on cross-appeal or on certiorari seems not very important; whether it is now reviewable at all is more important.

For present purposes three steps in the proceedings, judicial and administrative, now before this Court seem controlling: (1) On July 16, 1928, the Court of Appeals *inter alia* remanded the case to the Commission for further proceedings, to determine a proper depreciation allowance based not on cost but on present value and make any necessary rate changes accordingly [R. 1622-1653. *Public Service Comm. vs. United Rwys. Co.*, 155 Md. 572]; (2) on November 28, 1928, the Commission, pursuant to the opinion of the Court of Appeals, did determine a proper depreciation allowance and accordingly amended its previous order by limiting fares to 8¾ cents (or 10 cents cash) instead of 8 1/3 cents (or 9 cents cash) [R. 1695-1697]; (3) on March 20, 1929, the Court of Appeals affirmed a decree

of January 10, 1929, dismissing the *Company's* supplemental bill to enjoin enforcement of the Commission's rate order as amended on November 28, 1928 [R. 1712-1716]. Nobody "appealed" from, or prosecuted any judicial proceedings against, the Commission's action of November 28, 1928, in determining a proper depreciation allowance and increasing rates accordingly. The Commission now professes to appeal from the *first* of these three steps, viz., the decree of July 16, 1928, "made final by" the *third*, viz., the decree of March 20, 1929; what the Commission really attempts to appeal from is the *second* step, viz., its own action of November 28, 1928. In short, the Commission attempts to appeal not from the Court of Appeals to this Court, but from itself directly to this Court.

This Court has already decided that the decree of July 16, 1928, was not a final decree—either as to the questions decided against the Company or as to the question of depreciation. [*United Railways and Electric Company of Baltimore vs. West*, October Term, 1928, No. 464; *West vs. United Railways and Electric Company of Baltimore*, October Term, 1928, No. 465; 278 U. S. , 49 S. Ct. 79.] As to the question of depreciation, the decree of July 16, 1928, was *not* "made final" by the decree of March 20, 1929; by the Commission's action of November 28, 1928, in accordance with the opinion and decree of July 16, 1928, as to depreciation, that decree was *complied with* and that question has never since been presented to either the lower state court or the Court of Appeals.

If by a *final* decree of the Court of Appeals the Company's federal claim as to depreciation had been sustained, the Commission could have invoked review of such a decree on certiorari, not because the Commission itself has any constitutional or other federal right in the subject matter in controversy, but because section 237(b) confers this right of review on any party *against* whom a federal claim

is sustained. [*Blodgett vs. Silberman*, 277 U. S. 1.] The Commission, however, is a mere creature of the State of Maryland, and has no constitutional or other federal right of its own against its creator, the State of Maryland, or any other branch of the State Government, judicial, legislative or executive. [*Pawhuska vs. Pawhuska Oil & Gas Co.*, 250 U. S. 394; *Trenton vs. New Jersey*, 262 U. S. 182; *Newark vs. New Jersey*, 262 U. S. 192.] The Commission's action of November 28, 1928, in accordance with the decree of July 16, 1928, is not analogous to the action of an individual or a private corporation in paying under compulsion a money judgment or decree. Such compulsory private action ordinarily would not defeat a right of appellate review of the questions of private right involved in the judgment or decree. The Commission's action of November 28, 1928, as to depreciation was mere administrative action of the State of Maryland itself; the decree of July 16, 1928, was *judicial* action of the State, which constituted *part* (evidence, old and new, constituting another part) of the data on which this administrative action was based. This Court has already decided that the decree of July 16, 1928, was not a *final* decree, and therefore was not reviewable. The Commission's action of November 28, 1928, was not a *judicial* decree at all, and therefore is not directly reviewable by this Court. [*Staten Island Rapid Transit R. Co. vs. Transit Commission*, 276 U. S. 603.] The Court of Appeals' decree of March 20, 1929, was not a decree *as to depreciation* at all, and as to that question is not reviewable by this Court either on cross-appeal or on certiorari.

At this stage the Company refrains from discussing the merits (or the grounds of decision below, non-federal as well as federal) of the question as to depreciation, not because under the decisions of this Court this question seems to be doubtful or of itself to deserve review on certiorari, but because, the case being already here on the Company's

appeal, the Company would not ask that consideration of this question be excluded by denial of *discretionary* jurisdiction. The Company's position is that action on this question is not now reviewable at all in this Court, either as of right on cross-appeal or in the exercise of discretionary jurisdiction on certiorari. How far the same question may be incidentally involved in the main question presented on the Company's appeal, of course is not now to be determined.

Respectfully submitted,

CHARLES MCHENRY HOWARD,
CHARLES MARKELL,
HENRY H. WATERS,

Counsel for The United Railways and Electric Company of Baltimore, Cross-Appellee and Respondent.

SUPREME COURT OF THE UNITED STATES.

Nos. 55 and 64.—October Term, 1929.

The United Railways and Electric Company of Baltimore, Appellant,
55
vs.
Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, Constituting the Public Service Commission of Maryland.

Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, Constituting the Public Service Commission of Maryland, Appellants,
64
vs.
The United Railways and Electric Company of Baltimore.

Appeals from the Court of Appeals of the State of Maryland.

[January 6, 1930.]

Mr. Justice Sutherland delivered the opinion of the Court.

The first of these titles (No. 55) is an appeal, and the second (No. 64) a cross-appeal, from a decree of the Court of Appeals of Maryland. The case arose from an order of the state Public Service Commission limiting the rate of passenger fares to be charged by the United Railways and Electric Company for carrying passengers over its lines in the City of Baltimore. The company, by its appeal, attacks the commission's order as confiscatory. The cross-appeal seeks to raise the question whether the amount for annual depreciation allowed the company should be calculated upon the present value of the company's property or upon its cost.

Upon application of the company to the commission, made in 1927, for an increase in fares, the commission passed an order making an increase, but not to the extent sought. Thereupon, suit was brought in a state circuit court on the grounds that the

rate fixed by the commission was confiscatory and that the annual allowance for depreciation was calculated upon a wrong basis, namely, upon cost, instead of present value of depreciable property. The circuit court, in an able opinion, sustained the company upon both grounds, and enjoined the enforcement of the commission's order. On appeal, the court of appeals upheld the view of the circuit court in respect of depreciation, but held the rate of return not confiscatory. 155 Md. 572. Thereupon, the commission increased the depreciation allowance in accordance with the decree of the court and adjusted the rate of fare to the extent necessary to absorb the increased allowance. A second suit and an appeal to the court of appeals followed, and that court entered a decree, — Md. —; 145 Atl. 340, sustaining the action of the commission; and it is that decree which is here for review.

The facts, so far as we find it necessary to review them, are not in dispute. The company since 1899 has owned and operated all the street railway lines in the City of Baltimore. Its present capital structure consists of $24,000,000 of common stock, $38,000,000 of ordinary bonded indebtedness, and $14,000,000 of perpetual income bonds redeemable at the option of the company after 1949. Due to the increased use of automobiles, the total number of passengers carried has for some time steadily decreased, while the number carried during the "rush hours" has increased. This has resulted in an increase of expenses in proportion to the whole number of passengers carried, since equipment, etc., must be maintained and men employed sufficient to care for the increased business of the "rush hours," notwithstanding their reduced productiveness during the hours of decreased business. Since the war operating expenses have almost if not quite doubled.

The present value of the property used was fixed by the commission at $75,000,000, and this amount was accepted without question by both parties in the state circuit court and in the court of appeals. Included in this valuation is $5,000,000 for easements in the streets of Baltimore. The court of appeals had held in another and earlier case, *Miles* v. *Pub. Serv. Comm.*, 151 Md. 337, that the easements constituted an interest in real estate and that in making up the rate base their value should be included. The commission in the present case, accordingly, included the amount in the valuation and made no attack upon the item in the courts below, where it passed as a matter not in dispute. The item is now

challenged by counsel for the commission in this Court, and other objections to the valuation are suggested, likewise for the first time. We do not find it necessary to consider this challenge or these objections, for, if they ever possessed substance, they come too late. In the further consideration of the case, therefore, we accept, for all purposes, the valuation of $75,000,000 as it was accepted and acted upon by parties, commission and courts below.

The commission fixed a rate of fare permitting the company to earn a return of 6.26 per cent. on this valuation; and, so far as No. 55 is concerned, the case resolves itself into the simple question whether that return is so inadequate as to result in a deprivation of property in violation of the due process of law clause of the Fourteenth Amendment. In answering that question, the fundamental principle to be observed is that the property of a public utility, although devoted to the public service and impressed with a public interest, is still private property; and neither the corpus of that property nor the use thereof constitutionally can be taken for a compulsory price which falls below the measure of just compensation. One is confiscation no less than the other.

What is a fair return within this principle cannot be settled by invoking decisions of this Court made years ago based upon conditions radically different from those which prevail today. The problem is one to be tested primarily by present day conditions. Annual returns upon capital and enterprise, like wages of employees, cost of maintenance and related expenses, have materially increased the country over. This is common knowledge. A rate of return upon capital invested in street railway lines and other public utilities which might have been proper a few years ago no longer furnishes a safe criterion either for the present or the future. *Lincoln Gas Co.* v. *Lincoln*, 250 U. S. 256, 268. Nor can a rule be laid down which will apply uniformly to all sorts of utilities. What may be a fair return for one may be inadequate for another, depending upon circumstances, locality and risk. *Willcox* v. *Consolidated Gas Co.*, 212 U. S. 19, 48-50. The general rule recently has been stated in *Bluefield Co.* v. *Pub. Serv. Comm.*, 262 U. S. 679, 692-695:

"What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to

earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.

. . . . . .

"Investors take into account the result of past operations, especially in recent years, when determining the terms upon which they will invest in such an undertaking. Low, uncertain or irregular income makes for low prices for the securities of the utility and higher rates of interest to be demanded by investors. The fact that the company may not insist as a matter of constitutional right that past losses be made up by rates to be applied in the present and future tends to weaken credit, and the fact that the utility is protected against being compelled to serve for confiscatory rates tends to support it. In this case the record shows that the rate of return has been low through a long period up to the time of the inquiry by the commission here involved."

What will constitute a fair return in a given case is not capable of exact mathematical demonstration. It is a matter more or less of approximation about which conclusions may differ. The court in the discharge of its constitutional duty on the issue of confiscation must determine the amount to the best of its ability in the exercise of a fair, enlightened and "independent judgment as to both law and facts." *Ohio Valley Co.* v. *Ben Avon Borough*, 253 U. S. 287, 289; *Bluefield Co.* v. *Pub. Serv. Comm., supra*, pp. 689, 692; *Lehigh Valley R. R.* v. *Commissioners*, 278 U. S. 24, 36.

There is much evidence in the record to the effect that in order to induce the investment of capital in the enterprise or to enable the company to compete successfully in the market for money to finance its operations, a net return upon the valuation fixed by the commission should be not far from 8 per cent. Since 1920 the company has borrowed from time to time some $18,000,000, upon which it has been obliged to pay an average rate of interest ranging

well over 7 per cent. and this has been the experience of street railway lines quite generally. Upon the valuation fixed, with an allowance for depreciation calculated with reference to that valuation, and upon the then prescribed rates, the company for the years 1920 to 1926, both inclusive, obtained a return of little more than 5 per cent. per annum. It is manifest that just compensation for a utility, requiring for efficient public service skillful and prudent management as well as use of the plant, and whose rates are subject to public regulation, is more than current interest on mere investment. Sound business management requires that after paying all expenses of operation, setting aside the necessary sums for depreciation, payment of interest and reasonable dividends, there should still remain something to be passed to the surplus account; and a rate of return which does not admit of that being done is not sufficient to assure confidence in the financial soundness of the utility to maintain its credit and enable it to raise money necessary for the proper discharge of its public duties. In this view of the matter, a return of 6.26 per cent. is clearly inadequate. In the light of recent decisions of this Court and other Federal decisions, it is not certain that rates securing a return of 7½ per cent. or even 8 per cent. on the value of the property would not be necessary to avoid confiscation.* But this we need not decide, since the company itself sought from the commission a rate which it appears would produce a return of about 7.44 per cent., at the same time insisting that such return fell short of being adequate. Upon the present record, we are of opinion that to enforce rates producing less than this would be confiscatory and in violation of the due process clause of the Fourteenth Amendment.

---

*See, for example, *Galveston Elec. Co.* v. *Galveston*, 258 U. S. 388, 400; *Brush Elec. Co.* v. *Galveston*, 262 U. S. 443; *City of Fort Smith* v. *Southwestern Bell Tel. Co.*, 270 U. S. 627, affirming *per curiam Southwestern Bell Tel. Co.* v. *City of Fort Smith*, 294 Fed. 102, 108; *Patterson* v. *Mobile Gas Co.*, 271 U. S. 131, affirming in part *Mobile Gas Co.* v. *Patterson*, 293 Fed. 208, 221; *McCardle* v. *Indianapolis Co.*, 272 U. S. 400, 419 and note; *Ottinger* v. *Brooklyn Union Co.*, 272 U. S. 579, modifying and affirming *Kings County Lighting Co.* v. *Prendergast*, 7 F. (2d) 192, and *Brooklyn Union Gas Co.* v. *Prendergast*, 7 F. (2d) 628; *R. R. Commission* v. *Duluth St. Ry.*, 273 U. S. 625, affirming *Duluth St. Ry. Co.* v. *Railroad and Warehouse Commission*, 4 F. (2d) 543; *City of Minneapolis* v. *Rand*, 285 Fed. 818, 830; *New York Telephone Co.* v. *Prendergast*, 300 Fed. 822, 826; *Id.*, 11 F. (2d) 162, 163; *New York & Richmond Gas Co.* v. *Prendergast*, 10 F. (2d) 167, 209.

Complaint also is made of the action of the commission in abolishing the second fare zone established by the company on what is called the Halethorpe line and substituting a single fare for the two fares theretofore exacted. Halethorpe is an unincorporated community lying outside the limits of Baltimore city. With a single fare, the extension of the line to Halethorpe is not profitable, but, nevertheless, it is an integral part of the railway system, and it will be enough if the commission shall so readjust the fares as to yield a fair return upon the property, including the Halethorpe line, as a whole. If, in doing so, the commission shall choose, not to restore the second fare, but to retain in force the single fare, we perceive no constitutional objection.

The commission sought a review of the question in respect of the annual depreciation allowance, both by a cross-appeal and, later, by petition for certiorari. The question of jurisdiction on the cross-appeal as well as the consideration of the petition for certiorari were postponed to the hearing on the merits. We do not now find it necessary to decide either matter. As the amount of depreciation to be allowed was contested throughout, is a necessary element to be determined in fixing the rate of fare and is closely related in substance to the case brought here by the company's appeal, it well may be considered in conection therewith. In these circumstances neither cross-appeal nor certiorari is necessary to present the question.

The allowance for annual depreciation made by the commission was based upon cost. The court of appeals held that this was erroneous and that it should have been based upon present value. The court's view of the matter was plainly right. One of the items of expense to be ascertained and deducted is the amount necessary to restore property worn out or impaired, so as continuously to maintain it as nearly as practicable at the same level of efficiency for the public service. The amount set aside periodically for this purpose is the so-called depreciation allowance. Manifestly, this allowance cannot be limited by the original cost, because, if values have advanced, the allowance is not sufficient to maintain the level of efficiency. The utility "is entitled to see that from earnings the value of the property invested is kept unimpaired, so that at the end of any given term of years the original investment remains as it was at the beginning." *Knoxville* v. *Water Co.*, 212 U. S. 1, 13-14. This naturally calls for expenditures equal to the cost

the worn out equipment at the time of replacement; and this, all practical purposes, means present value. It is the settled e of this Court that the rate base is present value, and it would wholly illogical to adopt a different rule for depreciation. As Supreme Court of Michigan, in *Utilities Commission* v. *Tele-ne Co.*, 228 Mich. 658, 666, has aptly said: "If the rate base present fair value, then the depreciation base as to depreciable perty is the same thing. There is no principle to sustain a ding that a utility may earn on the present fair value of its perty devoted to public service, but that it must accept and public must pay depreciation on book cost or investment cost ardless of present fair value. We repeat, the purpose of per-tting a depreciation charge is to compensate the utility for prop-y consumed in service, and the duty of the commission, guided experience in rate making, is to spread this charge fairly over e years of the life of the property." And see *S. W. Tel. Co.* v. *b. Serv. Comm.*, 262 U. S. 276, 288; *Georgia Ry.* v. *R. R. Comm.*, 2 U. S. 625, 633.

We conclude that an injunction should have been granted against e commission's order.

No. 55. Decree reversed and cause remanded for further proceedings not inconsistent with this opinion.

No. 64. Cross-appeal dismissed. Certiorari denied.

A true copy.

Test:

Clerk, Supreme Court, U. S.

UPREME COURT OF THE UNITED STATES.

Nos. 55 and 64.—October Term, 1929.

he United Railways and Electric Co., Appellant, *vs.* Harold E. West, Chairman, et al.	On Appeal from the Court of Appeals of Maryland.
arold E. West, Chairman, et al., Appellant and Petitioner, *vs.* he United Railways and Electric Co.	On Appeal from and Certiorari to the Court of Appeals of Maryland.

[January 6, 1930.]

Mr. Justice Brandeis, dissenting.

Acting under the direction of the Court of Appeals, *Public Serv- e Commission* v. *United Railways & Electric Co.*, 155 Md. 72, the Commission entered, on November 28, 1928, an order ermitting the Railways to increase its rate of fare to 10 cents cash, ur tokens for 35 cents.[1] That order was sustained in *United Rail- ays & Electric Co.* v. *West*, 145 Atl. 340, and the Railways has ap- ealed to this Court. The claim is that the order confiscates its roperty because the fare fixed will yield, according to the esti-

[1]The rate of fare on the Railways' lines had been 5 cents until 1918. Then applied for authority to increase its fares "purely as a war emergency d during the period of war conditions". Six increases have since been anted: to 6 cents on January 7, 1919, Re United Rys. & Elec. Co., P. U. R. 19C, 74; to 7 cents cash, four tokens for 26 cents, on September 30, 1919, United Rys. & Elec. Co., P. U. R. 1920A, 1; to a flat 7 cents on December , 1919, Re United Rys. & Elec. Co., P. U. R. 1920A, 995; to 8 cents, two kens for 15 cents, on May 26, 1924, Re United Rys. & Elec. Co., P. U. R. 24D, 713. This was the rate of fare when, on August 1, 1927, the Railways ed with the Commission the present application for a flat 10 cent fare. In original decision thereon the Commission authorized a fare of 9 cents sh, three tokens for 25 cents, Re United Rys. & Elec. Co., P. U. R. 1928C, 4. To provide the additional revenue required by the decision of the Court Appeals concerning depreciation, the Commission then raised the fare to cents cash, four tokens for 35 cents, Re United Rys. & Elec. Co., P. U. R. 29A, 180. The ilways is still seeking to secure a flat 10 cent fare. The ilways had by order of the Commission been protected from jitney com- tition. See P. U. R. 1928C, 604, 632.

mates, no more than 6.26 per cent. upon the assumed value. There are several reasons why I think the order should be held valid.

A net return of 6.26 per cent. upon the present value of the property of a street railway enjoying a monopoly in one of the oldest, largest and richest cities on the Atlantic Seaboard would seem to be compensatory. Moreover, the estimated return is in fact much larger, if the rules which I deem applicable are followed. It is 6.70 per cent. if, in valuing the rate base, the prevailing rule which eliminates franchises from a rate base is applied. And it is 7.78 per cent. if also, in lieu of the deduction for depreciation ordered by the Court of Appeals, the amount is fixed, either by the method of an annual depreciation charge computed according to the rules commonly applied in business, or by some alternative method, at the sum which the long experience of this railway proves to have been adequate for it.

First. The value of the plant adopted by the Commission as the rate base was fixed by it at $75,000,000 in a separate valuation case, decided on March 9, 1926, modified, pursuant to directions of the Court of Appeals,[2] on February 1, 1928, and not before us for review, *Re United Railways & Electric Co.*, P. U. R. 1926C, 441, P. U. R. 1928B, 737. Included in this total is $5,000,000 representing the value placed upon the Railways' so-called "easements." If they are excluded, the estimated yield found by the Commission would be increased by .44 per cent. That is, the net earnings, estimated at $4,691,606 would yield, on a $70,000,000 rate base, 6.70 per cent. The People's Counsel contended that since these "easements" are merely the privileges gratuitously granted to the Railways by various county and municipal franchises to lay tracks and operate street cars on the public highways,[3] they should be excluded from the rate base when considering whether the order is confiscatory in violation of the Federal Constitution. This alleged error of federal law in the valuation may be considered on this appeal. For, the rate allowed by the Commission is attacked on the assumption that the return on the property is only 6.26 per cent.[4]

[2]Miles v. Public Service Comm., 151 Md. 337.

[3]A small part of these "easements" are privileges granted by franchises to operate street cars on portions of the streets which the public uses only at intersections with other streets.

[4]The Commission's opinions and orders in the valuation proceeding are referred to in the several pleadings and are printed as part of the record in this case.

Compare *United States* v. *American Ry. Express Co.*, 265 U. S. 425, 435; *Union Tool Co.* v. *Wilson*, 259 U. S. 107, 111.

Where a rate order is alleged to be void under the Federal Constitution because confiscatory, the question whether a specific class of property should be included in the rate base is to be determined not by the state law, but by the federal law. Whether the return is sufficient under the state law is a question which does not concern us. We are concerned solely with the adequacy or inadequacy of the return under the guarantees of the federal law. In determining whether a prescribed rate is confiscatory under the Federal Constitution, franchises are not to be included in valuing the plant, except for such amounts as were actually paid to the State, or a political subdivision thereof, as consideration for the grant. *Cedar Rapids Gas Light Co.* v. *Cedar Rapids*, 223 U. S. 655, 669; *Des Moines Gas Co.* v. *Des Moines*, 238 U. S. 153, 169; *Galveston Electric Co.* v. *Galveston*, 258 U. S. 388, 396; *Georgia Ry. & Power Co.* v. *Railroad Commission*, 262 U. S. 625, 632[5]. Franchises to lay pipes or tracks in the public streets, like franchises to conduct the business as a corporation, are not donations to a utility of property by the use of which profit may be made. They are privileges granted to utilities to enable them to employ their property in the public service and make profit out of such use of that property. As stated in the New Hampshire statute, "all such franchises, rights and privileges being granted in the public interest only" are "not justly subject to capitalization against the public."[6]

Had the "easements" been called franchises it is probable that no value would have been ascribed to them for rate-making purposes. For the Maryland public utilities law, in common with the statutes of many States,[7] forbids the capitalization of franchises.

---

[5]Also Westinghouse El. & Mfg. Co. *v.* Denver Tramway Co., 3 F. (2d) 285, 302, affirmed sub nom. City and County of Denver *v.* Denver Tramway Co., 23 F. (2d) 287; Pub. Util. Comm. *v.* Capital Traction Co., 17 F. (2d) 673, 675-6; Re Capital City Telegraph Co., P. U. R. 1928D, 763, 766, 776 (Mo.); Re Tracy Gas Co., P. U. R. 1927C, 177, 181 (Cal.), Re Southern Pacific Co., P. U. R. 1926A, 298, 303; Re Potomac Electric Power Co., 1917D, 563, 680. No case has been found which accepts the rule laid down by the Court of Appeals.

[6]*New Hampshire*—P. L. 1926, Vol. 2, ch. 241, § 10, p. 943.

[7]*Arizona*—Rev. Stat. 1913, § 2328(b), p. 811; *California*—Public Utilities Law, § 52b, Deering Codes & Gen. L. Supp. 1925-1927, Act 6386, § 52(b), p. 1811; *Idaho*—Comp. Stat. 1919, Vol. 1, § 4290, p. 1221; *Illinois*—Cahill's

But calling these privileges "easements" does not differentiate them for rate purposes from ordinary corporate franchises, when applying the Federal Constitution. In none of the cases excluding franchises from plant value was any distinction made, in this respect, between ordinary corporate franchises and franchises to use the public streets, although many of the cases involved privileges of the latter type. The Court of Appeals and the Commission were influenced by the fact that the so-called "easements" were taxed. This fact does not justify including them in the rate base. Corporate franchises are frequently taxed;[8] and although taxed, are not valued for rate purposes. Compare *Georgia Ry. & Power Co.* v. *Railroad Commission,* 278 Fed. 242, 244-5. The "easements" differ from ordinary franchises only in the technicality that, under the law of Maryland, the right to use the streets is, for taxation purposes, real property, whereas ordinary franchises are personal property.

Second. The amount which the Commission fixed, in its original report, as the appropriate depreciation charge was $883,544. That sum is 5 per cent. of the estimated gross revenues. Referring to the method of arriving at the amount of the charge the Commission there said: "The Commission believes that it might be more logical to base the annual allowance for depreciation upon the cost of depreciable property, rather than upon gross revenues. The relation between gross revenues and depreciation is

---

Rev. Stat. 1929, Ch. 11a, § 36, p. 2047; *Indiana*—Burns' Ann. Stat. 1926, Vol. 3, § 12763, p. 1258; *Maryland*—Bagby's Ann. Code, 1924, Vol. 1, Art. 23, § 381, p. 832; *Missouri*—Rev. Stat. 1919, Vol. 3, §§ 10466, 10484, 10508, pp. 3425, 3262, 3279; *Nebraska*—Comp. Stat. 1922, § 676, p. 321, amended by L. 1925, ch. 141; *New Hampshire*—P. L. 1926, Vol. 2, ch. 241, § 10, p. 943; *New Jersey*—1911-1924, Cum. Supp. to Comp. Stat. Vol. 2, *167-24, p. 2886; *New York*—Cahill's Cons. L. 1923, ch. 49, §§ 69, 101, pp. 1746, 1759; 1929 Supp. ch. 49, §§ 55, 82, pp. 282, 283; *Pennsylvania*—Stat. 1920 (West Pub. Co.) § 18095, p. 1745. Some of the statutes, in addition to prohibiting the capitalization of franchises, specifically direct that no franchise shall be valued for rate-making purposes: *Iowa*—Code 1927, § 8315, p. 1076; *Minnesota*—Gen. Stat. 1923, Chap. 28, § 4823, p. 683; § 5304, p. 733; *North Dakota*—Supp. to Comp. Laws, 1913-1925, ch. 13B, § 4609c37, p. 969; § 4609c40, p. 971; *Ohio*—Throckmorton's Ann. Code, 1929, §§ 614-23, 614-46, 614-59, pp. 158, 160, 164; *Wisconsin*—Stat. 1925, Vol. 1, 184.15, p. 1446.

[8]Society For Savings *v.* Coite, 6 Wall. 594; Cream of Wheat Co. *v.* Grand Forks, 253 U. S. 325, 328;; Roberts & Schaefer Co. *v.* Emmerson, 271 U. S. 50, 55.

remote and indirect while there is a direct relation between the cost of a piece of property and the amount that ought to be set aside for its consumption by use. However, the allowance which this Commission has made for depreciation, 5 per cent of the gross revenues, has provided fairly well for current depreciation and retirements . . . Moreover, there is a broad twilight zone between depreciation and maintenance, and it may well be (and without any impropriety) that the maintenance account has been used to a certain extent to provide for depreciation. . . Any increase in the gross revenues resulting from an increase in fares would increase the amounts that would be set aside for depreciation and maintenance."[9] Without deciding that this allowance was inadequate, the Court of Appeals held that, as a matter of law, the depreciation charge should be based upon the then value of the depreciable property as distinguished from its cost; and directed the Commission to revise its estimates accordingly. Pursuant to that direction, the Commission added, in its supplemental report, $755,116 to the depreciation charge. The addition was, I think, ordered by the Court of Appeals under a misapprehension of the nature and function of the depreciation charge. And, in considering the adequacy of the return under the Federal Constitution, the estimate of the net earnings should accordingly be increased by $755,116, which, on the rate base of $70,000,000, would add 1.08 per cent. to the estimated return.

That the Court of Appeals erred in its decision becomes clear when the nature and purpose of the depreciation charge are analyzed and the methods of determining its proper amount are considered. The annual account of a street railway, or other business, is designed to show the profit or loss, and to acquaint those interested with the condition of the business. To be true, the account must reflect all the operating expenses incurred within the accounting period. One of these is the wearing out of plant. Minor parts, which have short lives and are consumed wholly within the year, are replaced as a part of current repairs.[10] Larger plant

[9]P. U. R. 1928C, 604, 637, 640, 641.

[10]Compare Classification of Operating Revenues and Operating Expenses of Steam Roads prescribed by Interstate Commerce Commission, issue of 1914, Special Instructions No. 2, p. 31. As to practice of the telephone companies (Bell system), see testimony on rehearing of Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, Docket Nos. 14700 and 15100, L. G. Woodford, March 19, 1928 (Printed by American Tel. & Tel. Co.), pp. 52-3.

units, unlike supplies, do not wear out within a single accounting period. They have varying service lives, some remaining useful for many years. Experience teaches that at the end of some period of time most of these units, too, will wear out physically or cease to be useful in the service. If the initial outlay for such units is entirely disregarded, the annual account will not reflect the true results of operation and the initial investment may be lost. If, on the other hand, this original expense is treated as part of the operating expenses of the year in which the plant unit was purchased, or was retired or replaced, the account again will not reflect the true results of operation. For operations in one year will then be burdened with an expense which is properly chargeable against a much longer period of use. Therefore, in ascertaining the profits of a year, it is generally deemed necessary to apportion to the operations of that year a part of the total expense incident to the wearing out of plant. This apportionment is commonly made by means of a depreciation charge.[11]

It is urged by the Railways that if the base used in determining what is a fair return on the use of its property is the present value, then logically the base to be used in determining the depreciation charge—a charge for the consumption of plant in service—must also be the present value of the property consumed.[12] Much that

[11]The depreciation charge or allowance is the annual or monthly amount thus apportioned as the year's equitable share of the expense of ultimate retirement of plant. The yearly charge is by many concerns allocated in monthly instalments. A depreciation reserve is a bookkeeping classification to which the depreciation charges are periodically credited. A depreciation fund is a fund separately maintained in which amounts charged for depreciation are periodically deposited. A depreciation reserve does not necessarily connote the existence of a separate fund. E. A. Saliers, Depreciation, Principles and Applications (1923) 80; W. A. Paton and R. A. Stevenson, Principles of Accounting (1918) 491-505.

[12]If the depreciation charge measured the actual consumption of plant, the logic of this conclusion might seem forceful. It should be pointed out, therefore, that, apart from the fact developed in the text, that the charge does not measure the actual consumption of plant, the contention is specious. A business man investing in a long-lived plant does not expect to have its value returned to him in instalments corresponding to the loss of service life. The most that a continuing business like a street railway may expect is that, at the end of the service life, it shall be reimbursed with the then value of the original investment, or with funds sufficient to replace the plant. As will be shown presently, there is no basis for assuming that either the value of the original investment or the replacement cost will, at the end of the service life, equal or approximate the present value. See note 49, *infra*.

l said about valuation in *Southwestern Bell Tel. Co.* v. *Pub. Serv. Comm.*, 262 U. S. 276, 289 and *St. Louis & O'Fallon R. R. Co.* v. *United States*, 279 U. S. 461, 488 applies to the depreciation charge. But acceptance of the doctrine of *Smyth* v. *Ames* does not require that the depreciation charge be based on present value of plant. For, an annual depreciation charge is not a measure of the actual consumption of plant during the year. No such measure has yet been invented. There is no regularity in the development of depreciation. It does not proceed in accordance with any mathematical law. There is nothing in business experience, or in the training of experts, which enables man to say to what extent service life will be impaired by the operations of a single year, or of a series of years less than the service life.[13]

Where a plant intended, like a street railway, for continuing operation is maintained at a constant level of efficiency, it is rarely possible to determine definitely whether or not its service life has in fact lessened within a particular year. The life expectancy of a plant, like that of an individual, may be in fact greater, because of unusual repairs or other causes, at the end of a particular year than it was at the beginning.[14] And even where it is known that there has been some lessening of service life within the year, it is never possible to determine with accuracy what percentage of the unit's service life has, in fact, been so consumed. Nor is it essential to the aim of the charge that this fact should be known. The main purpose of the charge is that irrespective of the rate of depreciation there shall be produced, through annual contri-

[13] "Depreciation of physical units used in connection with public utilities, or, indeed, with any other industries, does not proceed in accordance with any mathematical law. . . . There is no regularity in the development of the increasing need for repairs; there is no regularity in the progress of depreciation; but, in order to devise a reasonable plan for laying aside allowances from year to year to make good the depreciation as it accrues, and to provide for the accumulation of a sum equivalent to the cost less salvage of a unit by the time it is retired, some theory of depreciation progress must be assumed on which such allowances may be based." 81 Am. Soc. of Civil Eng. Transactions (1917), 1311, 1462-3. Compare E. A. Saliers, *op cit.*, note 11, at p. 132.

[14] "In our valuation work they (the railroad companies) have consistently taken the position that no depreciation exists in a railroad property which is maintained in 100 per cent efficiency." Proposed Report of Interstate Commerce Commission on Telephone and Railroad Depreciation Charges, Docket No. 14700 and 15100, August 15, 1929, p. 20.

butions, by the end of the service life of the depreciable plant, an amount equal to the total net expense of its retirement.[15] To that end it is necessary only that some reasonable plan of distribution be adopted. Since it is impossible to ascertain what percentage of the service life is consumed in any year,[16] it is either assumed that depreciation proceeds at some average rate (thus accepting the approximation to fact customarily obtained through the process of averaging) or the annual charge is fixed without any regard to the rate of depreciation.

The depreciation charge is an allowance made pursuant to a plan of distribution of the total net expense of plant retirement. It is a bookkeeping device introduced in the exercise of practical judgment to serve three purposes. It preserves the integrity of the investment. Compare *Knoxville* v. *Knoxville Water Company*, 212 U. S. 1, 13-14. It serves to distribute equitably throughout the several years of service life the only expense of plant retirement which is capable of reasonable ascertainment—the known cost less the estimated salvage value. And it enables those interested, through applying that plan of distribution, to ascertain, as nearly as is possible, the actual financial results of the year's operation. Many methods of calculating the amount of the allowance are used.[17] The charges to operating expenses in the several years and in the aggregate vary according to the method

[15]Some contend "that where accruing depreciation is dependent, not upon lapse of time, but upon amount and extent of use, it is unscientific to provide for depreciation charges in equal annual installments, and that these charges should be made to correspond with units of use rather than of time. By relating the charges to units of use, they contend that the burden of the charges will be spread more equitably, to the financial advantage of the carrier, over alternating periods of light and heavy traffic." Proposed Report of the Interstate Commerce Commission, note 14, *supra*, p. 15. The practices of street railways differ in respect to the manner of laying the year's contribution to the depreciation reserve. Some lay a fixed percentage upon the gross revenues; some a number of cents per car mile; some a fixed percentage on the cost of the depreciable plant. Though expressed in different terms, the amount contemplated to be charged may in fact be based on cost. See, e. g., Re Elizabethtown Water Co., P. U. R. 1927E, 39.

[16]See testimony on rehearing of Telephone and Railroad Depreciation Charges, note 10, *supra*, A. B. Crunden, March 21, 1928 (Printed by American Tel. & Tel. Co.), pp. 108-9; Dr. M. R. Maltbie, June 27, 1928, transcript, p. 1396.

[17]See note 56, *infra*.

adopted.[18] But under none of these methods of fixing the depreciation charge is an attempt made to determine the percentage of actual consumption of plant falling within a particular year or within any period of years less than the service life.[19]

Third. The business device known as the depreciation charge appears not to have been widely adopted in America until after the beginning of this century.[20] Its use is still stoutly resisted by many concerns.[21] Wherever adopted, the depreciation charge is based on the original cost of the plant to the owner. When the great changes in price levels incident to the World War led some to question the wisdom of the practice of basing the charge on original cost, the Chamber of Commerce of the United States warned business men against the fallacy of departing from the accepted basis.[22] And that warning has been recently repeated: "When

[18]See note 55, *infra.*

[19]See E. A. Saliers, *op. cit.*, note 11, supra, at p. 132: "This method (reducing balance), . . . does not take into account either the actual rapidity with which depreciation occurs, or the various modifying factors which may show their influence at any time. Since this objection is common to all methods, other considerations will probably lead to a choice."

[20]The first case in which this Court expressly recognized a depreciation allowance as a part of operating expenses is Knoxville *v.* Knoxville Water Co., 212 U. S. 1, 13, decided in 1909. In earlier cases cognizance was not taken of it. Compare Union Pacific R. R. Co. *v.* United States, 99 U. S. 402, 420; United States *v.* Kansas Pacific Ry. Co., 99 U. S. 455, 459; San Diego Land & Town Co. *v.* Jasper, 189 U. S. 439, 446. See also Lincoln Gas Co. *v.* Lincoln, 223 U. S. 349, 363. Among street railways, the Milwaukee Electric Railway & Light Co. became the pioneer by adopting it in 1897. Others followed in 1905. 31 Street Ry. Journal 169-70; 687-8. In England, the adoption of the depreciation charge had been hastened by a provision in the income tax law. Customs and Inland Revenue Act 1878, 41 Vict. c. 15, § 12. Massachusetts Acts 1849, c. 191, provided that the annual report required of railroads should give full information on "Estimated depreciation beyond the renewals, viz: road and bridges, buildings, engines and cars." See also Act 1846, c. 251. But in Massachusetts, as elsewhere in the United States, depreciation charges have not been customary among railroads, except in respect to equipment, pursuant to the rule prescribed by the Interstate Commerce Commission in 1907.

[21]See Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 301-303; Proposed Report of August 15, 1929, note 14, *supra*, p. 5-12, 17-20; H. E. Riggs, Depreciation of Public Utility Properties (1922) 78-92.

[22]See a pamphlet "Depreciation" issued on October 15, 1921, by the Fabricated Productions Department (now the Department of Manufacture) of the Chamber of Commerce of the United States.

the cost of an asset, less any salvage value, has been recovered, the process of depreciation stops,—the consumer has paid for that particular item of service. There are those who maintain that the obligation of the consumer is one rather of replacement,—building for building, machine for machine. According to this view depreciation should be based on replacement cost rather than actual cost. The replacement theory substitutes for something certain and definite, the actual cost, a cost of reproduction which is highly speculative and conjectural and requiring frequent revision. It, moreover, seeks to establish for one expense a basis of computation fundamentally different from that used for the other expenses of doing busines. Insurance is charged on a basis of actual premiums paid, not on the basis of probable premiums three years hence; rent on the amount actually paid, not on the problematical rate of the next lease, salaries, light, heat, power, supplies are all charged at actual, not upon a future contingent cost. As one writer has expressed it, 'The fact that the plant cannot be replaced at the same cost, but only at much more, has nothing to do with the cost of its product, but only with the cost of future product turned out by the subsequent plant.' As the product goes through your factory it should be burdened with expired, not anticipated, costs. *Charge depreciation upon actual cost less any salvage.*"[23]

Such is today, and ever has been, the practice of public accountants.[24] Their statements are prepared in accordance with principles of accounting which are well established, generally accepted and uniformly applied. By those accustomed to read the language of

[23]See pamphlet "Depreciation, Treatment in Production Costs," issued by Department of Manufacture, Chamber of Commerce of the United States, No. 512 (May, 1929), p. 7. In the Foreword it is said: "In presenting this treatise on depreciation, we have drawn not only on our own resources, but also have had the co-operation of many manufacturers, industrial engineers and accountants."

[24](1904) H. L. C. Hall, Manufacturing Costs, 132; (1905) B. C. Bean, Cost of Production, 75-98; (1911) H. A. Evans, Cost Keeping and Scientific Management, 30-5; S. Walton and S. W. Gilman, Auditing and Cost Accounts (11 Modern Business) 63-70; F. E. Webner, Factory Costs, 171; (1913) R. H. Montgomery, Auditing Theory and Practice, 317-39, (1921 ed.) Vol. 1, p. 634; (1915) F. H. Baugh, Principles and Practice of Cost Accounting, 42, 46-51; (1916) C. H. Scovell, Cost Accounting and Burden Application, 81-9; (1918) H. C. Adams, American Railway Accounting, 99-100, 279; R. B. Kester, Accounting Theory and Practice, Vol. 2, 99-209, 202; (1920) I. A. Berndt, Costs, Their Compilation and Use in Management, 101-6; Hodge and McKinsey,

accounting a depreciation charge is understood as meaning the appropriate contribution for that year to the amount required to make good the cost of the plant which ultimately must be retired. On that basis, public accountants certify to investors and bankers the results of operation, whether of public utilities, or of manufacturing or mercantile concerns. Corporate securities are issued, bought and sold, and vast loans are made daily, in reliance upon statements so prepared. The compelling logic of facts which led business men to introduce a depreciation charge has led them to continue to base it on the original cost of the plant despite the great changes in the price level incident to the World War. Basing the depreciation charge on cost is a rule prescribed or recommended

---

Principles of Accounting, 74-5; J. F. Sherwood, Public Accounting and Auditing, Vol. 1, 145-54; (1921) DeW. C. Eggleston and F. B. Robinson, Business Costs, 294-304; G. S. Armstrong, Essentials of Industrial Costing, 169-79; D. E. Burchell, Industrial Accounting, Series 1, No. 3, I, A. 2.d.(3); (1922) G. E. Bennett, Advanced Accounting, 212-34, 219; (1923) P. M. Atkins, Industrial Cost Accounting for Executives, 119-22; E. J. Borton, Cost Accounting Principles and Methods, 82-3; (1924) J. H. Bliss, Management Through Accounts, 304-14; W. H. Bell, Auditing, 232-40; H. P. Cobb, Shoe Factory Accounting and Cost Keeping, 232-40; C. B. Couchman, The Balance Sheet, 22-3, 49-56, 201-3; J. L. Dohr, Cost Accounting Theory and Practice, 378-87, 380; F. W. Kilduff, Auditing and Accounting Handbook, 380; E. L. Kohler and P. W. Pettengill, Principles of Auditing, 112-14; W. B. Lawrence, Cost Accounting, 308-10; A. B. Manning, Elements of Cost Accounting, 80; C. H. Scovell, Interest As A Cost, 83-4; F. E. Webner, Factory Overhead, 227; (1925) D. F. Morland and R. W. McKee, Accounting for the Petroleum Industry, 43-53; (1926) R. E. Belt, Foundry Cost Accounting, 240-3; DeW. Eggleston, Auditing Procedure, 319-20; (1927) S. Bell, Practical Accounting, 130-43; T. A. Budd and E. N. Wright, The Interpretation of Accounts, 195, 251-63, 253; H. R. Hatfield, Accounting, 145-6; (1928) C. R. Boland, Shoe Industry Accounting, 158-9; H. E. Gregory, Accounting Reports in Business Management, 158, 164-6; W. H. Hemingway, The National Financial Statement Interpreter, § 12, pp. 13-20; G. A. Prochazka, Accounting and Cost Finding for the Chemical Industries, 206-11; (1929) A. H. Church, Manufacturing Costs and Accounts, 5, 205ff; R. H. Montgomery, Auditing (Revision by W. J. Graham), 116-9; T. H. Sanders, Industrial Accounting, 144-5. See E. A. Saliers, Depreciation, Principles and Applications (1923) 56, 410, 425. At the Fourth International Cost Conference of the National Association of Cost Accountants held in Buffalo, N. Y., Sept. 10-13, 1923, the question whether depreciation charges should be based on original cost or replacement value was debated. On a vote at the close of the debate "nearly all rose" in favor of original cost. N. A. C. C. Yearbook 1923, pp. 183-201 at 201. The rule is the same in England. E. W. Newman, The Theory and Practice of Costing (1921) 20.

by those associations of business men who have had occasion since the World War to consider the subject.[25]

[25]National Coal Association, Annual Meeting at Chicago, May 21-23, 1919, Report and Suggestions of Committee on Standard System of Accounting and Analysis of Costs of Production, see also W. B. Reed, Bituminous Coal Mine Accounting, 1922, p. 119-126; Midland Club (Manufacturing Confectioners, Chicago) Official Cost Accounting and Cost Finding Plan, 1919, p. 43; United Typothetae of America: Standard Cost Finding System, pp. 4, 7, Treatise On The Practical Accounting System for Printers, 1921, p. 15, The Standard Book on Cost Finding by E. J. Koch, published by U. T. of A., pp. 13-14, Treatise on the Standard Accounting System for Printers, Interlocking With the Standard Cost Finding System, 1920, pp. 44-45; Tanners' Council: Uniform Cost Accounting System for the Harness Leather Division of the Tanning Industry, officially adopted Dec. 1, 1921, p. 31, Uniform Cost Accounting System for the Sole and Belting Leather Division of the Tanning Industry, 1921, p. 31, Uniform Cost Accounting System for the Calf, Kip, and Side Upper; Glove, Bag, and Strap; and Patent Leather Divisions of the Tanning Industry, 1922, pp. 35, 48, Uniform Cost Accounting System for the Goat and Cabretta Leather Division of the Tanning Industry, 1922, p. 27; National Retail Coal Merchants Association, Complete Uniform Accounting System for Retail Coal Merchants, 1922, Account A-120, p. 6; The Associated Knit Underwear Manufacturers of America, Cost Control for Knit Underwear Factories, 1924, p. 52; National Knitted Outerwear Association, Inc., Cost Accounting Manual for the Knitted Outerwear Industry (by W. Lutz), 1924, pp. 18-20; American Drop Forging Institute, Cost Committee, Essentials of Drop Forging Accounting, 1924, pp. 36-7; Rubber Association of America, Inc., Manual of Accounts and Budgetary Control for the Rubber Industry, by the Accounting Committee, 1926, pp. 70, 71, 75, 79, 82; Packing House Accounting, by Committee on Accounting of the Institute of American Meat Packers, 1929, p. 325; Cost Accounting for Throwsters, issued by Commission Throwsters' Division of The Silk Association of America, Inc., 1928, pp. 29-30; Cost Accounting for Broad Silk Weavers, issued by The Broad Silk Division of The Silk Association of America, Inc., 1929, pp. 44-45. As there stated: "The use of replacement cost as a basis for depreciation charges has been eliminated due to the following reasons: 1. Depreciation is charged to manufacturing cost to absorb the reduction in value of capital assets through the effect of use and time. It does not represent an accumulation for the purpose of acquiring assets in the future. 2. The replacement cost theory is impractical because it would require a constant revaluation of assets. It is, furthermore, unlikely that any manufacturer would rebuild the same plant ten years after its construction. 3. The depreciation charge absorbed in the cost of the product represents a charge for the use of present manufacturing facilities and cannot have any connection with assets to be acquired in the future. The depreciation charge on new and more efficient equipment to be acquired in the future may be higher and, perhaps, offset by a general reduction in manufacturing cost per unit. It is not logical to base all other cost elements on present expenses and make the one exception in the case of depreciation." (p. 45.)

Business men naturally took the plant at cost, as that is how they treat other articles consumed in operation. The plant, undepreciated, is commonly carried on the books at cost; and it is retired at cost. The net profit or loss of a business transaction is commonly ascertained by deducting from the gross receipts the expenditures incurred in producing them. Business men realized fully that the requirements for replacement might be more or less than the original cost. But they realized also that to attempt to make the depreciation account reflect economic conditions and changes would entail entry upon new fields of conjecture and prophecy which would defeat its purposes. For there is no basis in experience which can justify predicting whether a replacement, renewal or substitution falling in some future year will cost more or less than it would at present, or more or less than the unit cost when it was acquired.

The business men's practice of using a depreciation charge based on the original cost of the plant in determining the profits or losses of a particular year has abundant official sanction and encouragement. The practice was prescribed by the Interstate Commerce Commission in 1907,[26] when, in cooperation with the Association of American Railway Accounting Officers, it drafted the rule, which is still in force,[27] requiring steam railroads to make an annual depreciation charge on equipment. It has been consistently applied by the Federal Government in assessing taxes on net income and corporate profits;[28] and by the tax officials of the several

[26]Classification of Operating Expenses as Prescribed by the Interstate Commerce Commission, Third Revised Issue 1907, pp. 10-12, 38, 44-51.

[27]Classification of Operating Revenues and Operating Expenses of Steam Roads Prescribed by the Interstate Commerce Commission, Issue of 1914, pp. 59, 61-8. Cf. Special Instructions 8, *Id.* p. 33.

[28]Act of Oct. 3, 1913, ch. 16, Sec. II, B, 38 Stat. 114, 167, United States Internal Revenue Regulations No. 33, Jan. 5, 1914, Art. 129-146, p. 69-73; Act of Sept. 8, 1916, ch. 463, Sec. 5(a) and 6(a), 39 Stat. 756, 759, 760, Regulations No. 33 (Revised 1918), Art. 159-165, pp. 80-82; Act of Feb. 24, 1919 (Revenue Act of 1918), ch. 18, Sec. 214(a), par. (8) & (10), Sec. 234 (a), par. (7) & (9), 40 Stat. 1057, 1067-8, 1078, Regulations 45, Art. 161-171, pp. 62-66; Act of Nov. 23, 1921, ch. 136, § 214(a), par. (8) & (10), and § 234(a), par. (7) & (9), 42 Stat 227, 240, 241, 255, 256, Regulations 62, Art. 161-171, pp. 74-78; Act of June 2, 1924, ch. 234, § 214(a), par. (8) & (9) and Sec. 234(a) par. (7) & (8), 43 Stat. 253, 270-1, 284-5, Regulations 65, Art. 161-171, pp. 54-58; Act of Feb. 26, 1926, ch. 27, Sec. 214(a), par. (8) & (9) and Sec. 234(a), par. (7) & (8); 44 Stat. (Part 2), 9, 27, 42-3,

States for determining the net profits or income of individuals and corporations.[29] Since 1911, it has been applied by the United States Bureau of the Census.[30] Since 1915, it has been recommended by the Department of Agriculture.[31] Since 1917 by the Bureau of Mines.[32] In 1916, it was adopted by the Federal Trade Commission in recommendations concerning depreciation issued to manufacturers.[33] In 1917, it was prescribed by the United States Fuel Administration,[34] and by the War Ordnance Department.[35]

Regulations 69, Art. 161-170, pp. 56-60; Act of May 29, 1928, ch. 852, Sec. 23, par. (k) & (l), Sec. 113 & 114, 45 Stat. 791, 800, 818, 821, Regulations 74, Art. 201-210, pp. 51-56. See also Bureau of Internal Revenue, Bulletin "F", Income Tax, Depreciation and Obsolescence (1920) 18; Outline For The Study of Depreciation and Maintenance, prepared by the Bureau of Internal Revenue (1926).

[29]N. L. McLaren & V. K. Butler, California Tax Laws of 1929, 117ff; Prentice-Hall Massachusetts State Tax Service (Personal) 1926-28 paragraphs 13875-7, p. 13559; Mississippi Income Tax Law of 1924, (Issued by State Tax Commission), § 12(a) (8), Regulations No. 1 (1925), Art. 136-8, pp. 52-3; New York State Tax Commission Income Tax Bureau, Manual 22 (1922), Art. 171-6, p. 35-6, Manual 25 (1925), Art. 171-6, pp. 33-4, C. C. H. 1928-29, Personal Income Tax, par. 4511, p. 2793; G. R. Harper, A Digest of the Oregon State Income Tax Act and Regulations (1924), 18; Wisconsin Tax Service (Henry B. Nelson, Inc.), 1929, Vol. 1, pp. 163-4.

[30]Uniform Accounts for Systems of Water Supply, arranged by the U. S. Bureau of the Census, American Water Works Association and Others (1911) 27.

[31]U. S. Department of Agriculture, Bulletin 178, March 1, 1915, Cooperative Organization Business Methods, pp. 13-14; Bulletin 236, May 1, 1915, A System of Accounts for Farmers' Cooperative Elevators, p. 16; Bulletin 225, May 7, 1915, A System of Accounting for Cooperative Fruit Associations, p. 20; Bulletin 362, May 6, 1916, A System of Accounts for Primary Grain Elevators, p. 17; Bulletin 590, Feb. 27, 1918, A System of Accounting for Fruit Shipping Organizations, p. 23; Bulletin 985, A System of Accounting for Cotton Ginneries, 23, 27.

[32]Department of the Interior, Bureau of Mines, Bulletin 158, Petroleum Technology 43, Cost Accounting for Oil Producers, 1917, pp. 111-112; Technical Paper 250, Metal Mine Accounting, 1920, p. 26.

[33]Federal Trade Commission, Fundamentals of a Cost System for Manufacturers, July 1, 1916, 12-13.

[34]U. S. Fuel Administration, A System of Accounts for Retail Coal Dealers, Nov. 1, 1917, p. 17.

[35]War Department, Office of The Chief of Ordnance, Form 2941, Definition of "Cost" Pertaining to Contracts, June 27, 1917, pp 9-11.

In 1918, by the Air Craft Production Board.[36] In 1921, it was prescribed by the Federal Power Commission;[37] and it is continued in the revised rules of 1928.[38] In 1923, it was adopted by the depreciation section of the Interstate Commerce Commission in the report of tentative conclusions concerning depreciation charges submitted to the steam railroads, telephone companies and carriers by water,[39] pursuant to paragraph 5 of § 20, of the Interstate Commerce Act, as amended by Transportation Act, 1920.[40] On November 2, 1926, it was prescribed by the Commission in *Telephone and Railroad Depreciation Charges,* 118 I. C. C. 295. A depreciation charge based on original cost has been uniformly applied by the public utility commissions of the several States when determining net income, past or expected, for rate-making purposes.[41]

---

[36]Bureau of Air-Craft Production, General Ruling No. 28, May 3, 1918, of the Rulings Board of the Finance Department to the effect that in cost plus contracts depreciation must be based on original cost and "In no case shall depreciation be based on the cost of reproduction at present prices". See E. A. Saliers, *op. cit.,* note 11, p. 56.

[37]Rules and Regulations Governing the Administration of the Federal Water Power Act (1921), Regulation 16.

[38]Rules and Regulations Governing the Administration of the Federal Water Power Act (1928), Regulation 16, pp. 31-36.

[39]Bureau of Accounts, Depreciation Section, Report of the Preliminary Investigation of Depreciation Charges in Connection with Steam Roads and the Tentative Conclusions and Recommendations of the Depreciation Section for the Regulation of Such Charges, Docket No. 15100, Aug. 23, 1923, pp. 11-13; Same for Telephone Companies, Docket No. 14700, March 10, 1923, pp. 6, 18-21.

[40]Act of Feb. 28, 1920, ch. 91, 41 Stat. 456, 493.

[41]*Illinois*—Re Middle States Telephone Co., P. U. R. 1929B, 390, 396; Re Dixon Water Co., P. U. R. 1929B, 403, 408; Re Vermont Telephone & Exchange Co., P. U. R. 1929B, 411, 415; Re East St. Louis & Interurban Water Co., P. U. R. 1928A, 57, 68; Re Pekin Water Works Co., P. U. R. 1928C, 266, 276; Re Kinloch-Bloomington Tel. Co., P. U. R. 1927E, 135, 142; *Indiana*—Re Home Tel. Co. of Elkhart County, P. U. R. 1928A, 445, 455; Re Logansport Home Tel. Co., 1928E, 714, 725; Re Butler Tel. Co., P. U. R. 1925A, 240, 242, P. U. R. 1927C, 800, 804; *Minnesota*—Re Duluth Ry. Co., P. U. R. 1927A, 41, 52, 55; *Missouri*—Re Capital City Water Co., P. U. R. 1928C, 436, 460-1; Re Clinton County Telephone Co., P. U. R. 1928B, 796, 807; Re Capital City Water Co., P. U. R. 1925D, 41, 56, 57; *Nebraska*—Re Platte Valley Tel. Corp., P. U. R. 1928C, 193, 200; Re Meadow Grove Tel. Co., 1928D, 472, 477; Re Madison Tel. Co., P. U. R. 1929B, 385, 389; *New Jersey*—Re Elizabethtown

Fourth. In 1927 the business men's practice of basing the depreciation charge on cost was applied by this Court in *United States* v. *Ludey*, 274 U. S. 295, 300-301, a federal income tax case, saying: "The amount of the allowance for depreciation is the sum which should be set aside for the taxable year, in order that, at the

---

Water Co., P. U. R. 1927E, 39, 63; Re Coast Gas Co., P. U. R. 1923A, 349, 366; *New York*—Baird *v.* Burleson, P. U. R. 1920D, 529, 538; *Utah*—Re Big Spring Electric Co., P. U. R. 1927A, 655, 665-7; *Wisconsin*—Re Wisconsin-Minnesota Light & Power Co., P. U. R. 1920D, 428, 433-5; Milwaukee Electric Ry. & Light Co. *v.* Milwaukee, P. U. R. 1918E, 1, 58; but see Re Wisconsin Telephone Co., P. U. R. 1928B, 434; *West Virginia*—Re Cumberland & Allegheny Gas Co., P. U. R. 1928B, 20, 80; Re Clarksburg Light & Heat Co., P. U. R. 1928B, 290, 322-325; Re Pittsburgh & West Virginia Gas Co., P. U. R. 1927D, 844, 851; *South Carolina*—Re Rock Hill Tel. Co., P. U. R. 1928E, 221, 230, "We are of opinion that the cost of the property is the only possible reasonable authority upon which depreciation can be calculated. Depreciation is a reserve to equalize retirements and not a reserve to equalize replacements. A rate of depreciation based upon original cost, even, is little more than an intelligent guess; but based upon reproduction costs is the blindest kind of speculation. With the known original cost of a unit and an engineer's estimate of its service life and salvage value, . . . some semblance of accuracy might be reached. To guess its service life and salvage value is bad enough but who would venture to guess what it would cost to reproduce it ten or twenty years thereafter. . . . Depreciation reserve is intended to keep the investment level but not to insure the hazards of varying future."

In its second report in the instant case the Commission said: "The plan of providing for retirements at cost is that followed by the Interstate Commerce Commission and the utility regulatory commissions of most of the states, and by all other utilities under the jurisdiction of this Commission." P. U. R. 1929A, 180, 181.

The cost basis is required in the following classifications of accounts prescribed by the Commissions of: *Colorado*—Uniform System of Accounts for electric light and power utilities, 1915, account no. 351, pp. 29-30, account no. 775, pp. 67-68; Uniform System of Accounts for gas utilities, 1916, account no. 351, p. 28, account no. 775, pp. 56-57; Uniform System of Accounts for water utilities, 1920, account no. 351, pp. 25-26, account no. 775, pp. 65-66; *California*—Uniform Classification of Accounts for telephone companies, 1913, pp. 54-55; for water corporations, 1919, pp. 14-15, account no. 29; for gas corporations, 1915, account no. 29, p. 15; for electric corporations, 1919, account no. 29, p. 15; *Connecticut*—Uniform System of Accounts for water companies, 1922, account no. 180, p. 17; *Georgia*—Uniform System of Accounts for telephone companies, 1920, pp. 6-7, account no. 12, p. 12, account no. 19, p. 16; *Idaho*—Uniform System of Accounts for water corporations, 1914, account 402, pp. 92-93; account W6, p. 10; for electric light and power companies, 1914, account 54, p. 29, account 215, p. 95; *Indiana*—Uniform System of Accounts for water utilities, 1920, account 370, p. 52, account 335, p. 33;

end of the useful life of the plant in the business, the aggregate of the sums set aside will (with the salvage value) suffice to provide an amount equal to the original cost."[42] I know of nothing in the Federal Constitution, or in the decisions of this Court, which should lead us to reject, in determining net profits, the rule sanctioned by the universal practice of business men and governmental departments. For, whether the expense in plant consumption can be more nearly approximated by using a depreciation charge based on original cost or by one based upon fluctuating present values is a problem to be solved, not by legal reasoning, but by the exercise of practical judgment based on facts and business experience. The practice of using an annual depreciation charge based on original cost[43] when determining for purposes of investment,

---

for electric utilities, 1920, account 297, p. 73, account 309, p. 46; for heating utilities, 1920, account 22, p. 18, and account 118, p. 35; for electric railways, 1913, p. 52-53; *Kansas*—Uniform System of Accounts for class D telephone companies, 1920, p. 4; *Massachusetts*—Uniform System of Accounts for gas and electric companies, 1921, account G678, p. 96, E678, p. 118, also pp. 27-28; *Minnesota*—Uniform System of Accounts for telephone companies class C and D, 1918, accounting circular no. 52, account 360, pp. 24-25; *Missouri*—Uniform System of Accounts for class D telephone corporations, Public Service Commission General Order No. 22, 1918, pp. 9-10; *Montana*—Uniform Classification of Accounts for gas utilities, 1913, pp. 20-21, 35; for electric utilities (undated but after 1919), pp. 25, 42-43; for telephone utilities, 1913, pp. 22, 35; for water utilities (undated but after 1919), 26, 42; for street railways, 1913, 26 41; *New Hampshire*—Uniform Classification of Accounts for gas utilities, Accounting Circular No. 2, 1914, account 220, p. 88, account 98, p. 53-4; *New Jersey*—Uniform System of Accounts for electric light, heat and power utilities, 1915, account 215, pp. 26-27, account 494, p. 77; for street or traction railway utilities, 1919, p. 18 (the accounts here are called "Accrued Amortization of Capital" and "General Amortization" instead of "Depreciation Reserve" and "Depreciation Account" or "Expense"); *Pennsylvania*—Uniform Classification of Accounts for common carriers by motor vehicle, Class A, 1928, account 179, p. 31-32; class B, 1928, account 179, p. 26; class C, 1928, p. 20. No information has been found about the practice in the States not listed.

[42]The Railways must hereafter assume the anomalous position of classing the additional $755,116 as an operating expense in its report to the Commission, and as part of its net income, in its income tax returns.

[43]When original cost is not known, or when property is acquired in some unusual way not involving purchase, some other base must, of course, be taken. But it is always a stable one. Original cost, as used in this opinion includes other such stable bases. Compare Revenue Act of 1928, Act of May 29, 1928, ch. 852, Sec. 113, 45 Stat. 791, 818; Interstate Commerce Commission rules cited in notes 26 and 27, *supra*.

taxation or regulation, the net profits of a business, or the return upon property, was not adopted in ignorance of the rule of *Smyth* v. *Ames,* 169 U. S. 466. That decision, rendered in 1898, antedates the general employment of public accountants;[44] and also antedates the general introduction here of the practice of making a depreciation charge. The decision of the Court of Appeals of Maryland here under review, as well as *State ex rel. Hopkins* v. *Southwestern Bell Telephone Co.,* 115 Kans. 236[45] and *Michigan Public Utilities Commission* v. *Michigan State Telephone Co.,* 228 Mich. 658,[46] were all decided after this Court reaffirmed the rule of *Smyth* v. *Ames* in *Southwestern Bell Telephone Co.* v. *Public Service Commission,* 262 U. S. 276. But since this decision, as before, the Bell Telephone companies have persisted in basing their depreciation charges upon the original cost of the depreciable property, *Board of Public Utility Coms.* v. *New York Tel. Co.,* 271 U. S. 23, 27. And they have insisted that the order of the Interstate Commerce Commission requiring a depreciation charge, 118 I. C. C. 295, should be so framed as to permit the continuance of that accounting practice.[47] The protest of the railroads, in that proceeding, against basing the charge on cost was made for the first time in 1927, in their petitions for a rehearing. And this

[44]The first American statute providing for examination of accountants and the use of the title C. P. A. was enacted by New York in 1896. Accountants' Handbook, edited by E. A. Saliers, p. 1326.

[45]In that case, the Special Commissioner to whom the case was referred, stated in his opinion (printed as an Appendix to the opinion of the Supreme Court, pp. 271-322, at p. 292), that if the return is figured on the present value of the utility's property, then the depreciation allowance must also be so figured. The Supreme Court did not mention this question in its opinion.

[46]The Michigan Supreme Court made a statement similar to that of the Special Commissioner in the Kansas case, but did not disturb the finding of the Commission. The court made no reference to the insurmountable practical difficulties presented.

[47]Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 301; testimony on behalf of the Bell System Companies, upon rehearing, March 19, 20, 21, 1928 (printed by American Tel. & Tel. Co.), pp. 6, 11-13, 98. See their brief submitted on original argument, p. 48: "The amount of the depreciation expense is the cost of the property used up; that is, it is the dollars consumed. Therefore it is the cost less the salvage realized at retirement." Also original record, May 1, 1923, pp. 12, 13, 20; Proposed Report of August 15, 1929, p. 14; Preliminary Report of Depreciation Section, Docket No. 14700, note 39, *supra,* pp. 6-7.

protest came only from those who insist that no depreciation charge whatsoever shall be made.[48]

To use a depreciation charge as the measure of the year's consumption of plant, and at the same time reject original cost as the basis of the charge, is inadmissible. It is a perversion of this business device. No method for the ascertainment of the amount of the charge yet invented is workable if fluctuating present values be taken as the basis. Every known method contemplates, and is dependent upon, the accumulation or credit of a fixed amount in a given number of years. The distribution of plant expense expressed in the depreciation charge is justified by the approximation to the fact as to the year's plant consumption which is obtained by applying the doctrine of averages. But if fluctuating present values are substituted for original cost there is no stable base to which the process of averaging can be applied. For thereby the only stable factor involved in fixing a depreciation charge would be eliminated. Each year the present value may be different. The cost of replacement at the termination of the service life of the several units or of the composite life cannot be foretold.[49] To use as a measure of the year's consumption of plant a depreciation charge based on fluctuating present values substitutes conjecture

[48]In Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, 344, the Commission said: "It is agreed by all that depreciation should be based primarily upon the original cost to the accounting company of the unit of property in question." In the petition for rehearing filed by the Presidents' Conference Committee on Valuation, however, it was stated, p. 15: "Consideration should be given to the question of whether accounting depreciation, as the order conceives it, should be estimated upon the basis of original cost or of present value, . . ." A similar statement is made for the first time in the petition for rehearing filed by the New York Central lines, at p. 5.

[49]In part, costs and values in the several future years will depend upon the general price level. As to this, even the economist can know nothing, save how the general price level has heretofore fluctuated from year to year; and that periods of rising prices have ever been followed by periods of falling prices. But cost and value in the several future years will depend in part upon factors other than the general price level. Even if the general price level for every future year were known, it would still be impossible to predict with reasonable accuracy the then cost or value of a unit then to be replaced, renewed or retired. For despite a higher general price level, the part might be procurable at smaller costs, by reason of economies introduced in its manufacture and changes in the methods and means of performing the work. See Excess Income of St. Louis & O'Fallon Ry. Co., 124 I. C. C. 3, 29, 41.

for experience. Such a system would require the consumer of today to pay for an assumed operating expense which has never been incurred and which may never arise.

The depreciation charge is frequently likened to the annual premium in legal reserve life insurance. The life insurance premium is calculated on an agreed value of the human life—comparable to the known cost of plant—not on a fluctuating value, unknown and unknowable. The field of life insurance presented a problem comparable to that here involved. Despite the large experience embodied in the standard mortality tables and the relative simplicity of the problem there presented, the actual mortality was found to vary so widely from that for which the premiums had provided, that their rate was found to work serious injustice either to the insurer or to the insured. The transaction resulted sometimes in bankruptcy of the insurer; sometimes in his securing profits which were extortionate; and rarely, in his receiving only the intended fair compensation for the service rendered. Because every attempt to approximate more nearly the amount of premium required proved futile, justice was sought and found in the system of strictly mutual insurance. Under that system the premium charged is made clearly ample; and the part which proves not to have been needed enures in some form of benefit to him who paid it.

Similarly, if, instead of applying the rule of *Smyth* v. *Ames*, the rate base of a utility were fixed at the amount prudently invested, the inevitable errors incident to estimating service life and net expense in plant consumption could never result in injustice either to the utility or to the community. For, if the amount set aside for depreciation proved inadequate and investment of new capital became necessary, the utility would be permitted to earn a return on the new capital. And if the amount set aside for depreciation proved to be excessive, the income from the surplus reserve would operate as a credit to reduce the capital charge which the rates must earn. If the Railways should ever suffer injustice from adopting cost of plant as the basis for calculating the depreciation charge, it will be an unavoidable incident of applying in valuation the rule of *Smyth* v. *Ames*. This risk, if it exists, cannot be escaped by basing the charge on present value. For this suggested escape, besides being entirely conjectural, is instinct with certainty of injustice either to the community or the Railways. The possibility of

such injustice admonishes us, as it did in deciding the constitutional questions concerning interstate commerce, *Foster Packing Co.* v. *Haydel*, 278 U. S. 1, 10, *Federal Trade Commn.* v. *Pacific Paper Assn.*, 273 U. S. 52, 64, and taxation, *Mountain Timber Co.* v. *Washington*, 243 U. S. 219, 237; *Shaffer* v. *Carter*, 252 U. S. 37, 55; *Farmers Loan & Trust Co.* v. *Minnesota*, No. 26, p. 4, decided this day, that rate regulation is an intensely practical matter.

Fifth. Public officials, investors and most large businesses are convinced of the practical value of the depreciation charge as a guide to knowledge of the results of operation. Many States require public utilities to make such a charge.[50] But most railroads some gas and electric companies and some other concerns, deny the propriety of making any annual depreciation charge.[51] They insist that the making of such a charge will serve rather to mislead than to aid in determining the financial result of the year's operations. They urge that the current cost of maintaining the plant, whether by repair, renewals or replacements, should be treated as a part of the maintenance account, at least in systems

[50] *Alabama*—Code of 1928, § 9769, p. 1758; *Arizona*—Revised Stat. 1913 (Civil Code), Tit. 9, § 2325, p. 807; *California*—Deering, Gen. Laws, 1923, Vol. 2, Act 6386, § 49, p. 2721; *Colorado*—Comp L. 1921, § 2945, p. 928; *Idaho* Comp. Stat. 1919, Vol. 1, § 2473, p. 703; *Illinois*—Cahill's Rev. Stat. 1929, ch. 111a, § 29, p. 2045; *Indiana*—Burns Ann. Stat. 1926, Vol. 3, § 12693-12696, p. 1245; *Massachusetts*—Acts 1921, ch. 268, § 1, p. 308, inserting new section 5A after § 5, Mass. Gen. L. 1921, p. 1624; Gen. L. 1921, Vol. 2, ch. 164, § 57, p. 1818; *Minnesota*—Gen. Stat. 1923, § 5305, p. 733, Mason's Stat. 1927, § 5305, p. 1107; *Missouri*—Rev. Stat. 1919, §§ 10470, 10488 and 10512, pp. 3250, 3266, 3283; *Nebraska*—Constitution Art. 10, § 5 (Comp. Stat. 1922, p. 96); *New Hampshire*—P. L. 1926, Vol. 2, ch. 240, §§ 9, 10, 11, p. 936; *New Jersey*—1911-1924, Cum. Supp. to Comp. Stat. Vol. 2, *167-17(*t*), p. 2883; *Ohio*—Throckmorton's Ann. Code, 1929, §§ 614-49 and 614-50, p. 161; *Oregon*—Olson's Oreg. L. 1920, Vol. 2, § 6046, p. 2422; *Pennsylvania*—Stat. 1920 (West Pub. Co.), §§ 18066, 18146, pp. 1742, 1752; *Tennessee*—Shannon's Ann. Code, 1926 Supp., § 3059a88(c), p. 733; *Wisconsin*—Stat. 1925, 196.09, p. 1550. Most of these statutes require the maintenance of a separate depreciation fund. Some require only a reserve. In Maryland, the Commission's power over accounting methods is held to include the power to require depreciation accounting, but not the maintaining of a separate fund. See Havre de Grace Bridge Co. *v.* Public Service Comm., 132 Md. 16.

[51] See note 21, *supra;* G. O. May, Carrier Property Consumed in Operation and the Regulation of Profits, 43 Q. J. Ec. 208-14; R. A. Carter and W. L. Ransom, Depreciation Charges of Railroads and Public Utilities, a memorandum filed with the depreciation section of the Bureau of Accounts of the Interstate Commerce Commission (1921).

consisting of large and diversified properties intended for continuous operation and requiring a constant level of efficiency. They insist that, in such systems, retirements, replacements and renewals attain a uniform rate and tend to be equal each year; that, therefore, no great disproportion in revenues and operating expenses in the various years results if the whole expenditure made for renewals or replacements in any year is treated as an expense of operation of that year and the retirements of property are not otherwise reflected in any specific charge. They admit that it may be desirable to create a special reserve, to enable the company to spread the cost of retiring certain large units of property over a series of years, thus preventing a disproportionate burden upon the operations of a single year. But they say that such a reserve is not properly called a depreciation reserve. Moreover they contend that when a large unit is retired, not because it has been worn out but because some more efficient substitute has been found, the cost of retirement should be spread over the future, so that it may fall upon those who will gain the benefit of the enhanced efficiency. Compare *Kansas City Southern Ry.* v. *United States*, 231 U. S. 423, 440-441. Under the replacement method of accounting advocated by the railroads and others there is no depreciation charge and no depreciation reserve. Operating expenses are charged directly with replacements at their cost. This method does not concern itself with all retirements, but only with retirements which are replaced.[52]

Despite the seemingly unanswerable logic of a depreciation charge, they oppose its adoption, urging the uncertainties inherent in the predetermination of service life and of salvage value,

[52] A modification of the depreciation reserve method is the "retirement reserve" recommended by the National Association of Railroad and Utilities Commissioners. This reserve does not involve necessary periodic charges of specific amounts to operating expenses. To this reserve are credited "such amounts as are charged to the operating expense account . . . appropriated from surplus, or both, to cover the retirement loss represented by the excess of the original cost plus cost of dismantling, over the salvage value of final capital retired from service." To the operating expense, "Retirement Expense" are charged "amounts . . . in addition to amounts appropriated from surplus, to provide a reserve against which may be charged the original cost of all property retired from service, plus cost of dismantling, less salvage." Proceedings, 37th Ann. Convention, 1925, pp. 441, 458; 32nd Ann. Conv. 1923, Appendix 1, pp. 21, 76, 106, Appx. 2, p. 21, 88.

and the disagreement among experts as to the most equitable plan of distributing the total net plant expense among the several years of service. They point out that each step in the process of fixing a depreciation charge is beset with difficulties, because of the variables which attend every determination involved. The first step is to estimate how long the depreciable plant will remain in service. Engineers calculate with certitude its composite service life by applying weighted averages to the data concerning the several property units. But their exactitude is delusive. Each unit has its individual life dependent upon the effect of physical exhaustion, obsolescence, inadequacy and public requirement.[53] The physical duration of the life depends largely upon the conditions of the use; and these cannot be foretold. The process of obsolescence is even less predictable. Advances in the arts are constantly being made which would require retirement at some time, even if the unit were endowed with perpetual physical life. But these advances do not proceed at a uniform pace. The normal progress of invention is stimulated or retarded by the ever changing conditions of business. Moreover, it is the practical embodiment of inventions which produces obsolescence; and business conditions deter-

[53]The adequacy of a depreciation charge depends, among other things, upon the liberality of the particular concern's practice in respect to maintenance, 81 Amer. Soc. Civil Eng. Transactions (1917), 1490; R. H. Montgomery, Auditing Theory And Practice (1921) Vol. 1, p. 625. It depends in part upon the scope of the causes of retirement to be covered by it. As to what is the proper scope, opinion differs widely. The telephone companies (Bell System) contend that the charge should cover all causes of retirement not provided for by ordinary maintenance charges, including extraordinary casualties like storm and fire. 118 I. C. C. 340. Others insist that the charge should not include any allowance for contingent or presently unascertainable obsolescence, inadequacy, changes in the art, public requirements, storm casualties, or extraordinary repairs or expense of similar character. 118 I. C. C. 341. Still others insist that the charge should cover only exhaustion due to wear and tear and lapse of time, collectively called superannuation, but not obsolescence, inadequacy and the like, which are said to be precipitate in their operation. The Proposed Report of the Interstate Commerce Commission on Telephone and Railroad Depreciation Charges, Docket Nos. 14700 and 15100, August 15, 1929, pp. 27-28, defines depreciation as "the loss in service value not restored by current maintenance and incurred in connection with the consumption or prospective retirement of property in the course of service from causes against which the carrier is not protected by insurance, which are known to be in current operation, and whose effect can be forecast with a reasonable approach to accuracy."

mine even more largely the time and the extent to which new inventions are embodied in improved machines. The march toward inadequacy, as distinguished from obsolescence, is likewise erratic.

The protestants point out that uncertainty is incident also to the second step in the process of fixing the appropriate depreciation charge. A plant unit rarely remains in service until consumed physically. Scrap remains; and this must be accounted for, since it is the net expense of the exhaustion of plant which the depreciation charge is to cover. Such scrap value is often a very large factor in the calculation of plant expense.[54] The probable salvage on the unit when retired at the end of its service life must, therefore, be estimated. But its future value is never knowable.

And, finally, the protestants show that after the net expense in plant consumption is thus estimated, there remains the task of distributing it equitably over the assumed service life—the allocation of the amount as charges of the several years. There are many recognized methods for calculating these amounts, each method having strenuous advocates; and the amounts thus to be charged, in the aggregate as well as in the successive years, differ widely according to the method adopted.[55] Under the straight line method, the aggregate of the charges of the several years equals the net plant expense for the whole period of service life; and the charge is the same for all the years. Under the sinking fund method, the aggregate of the charges of the several years is less

---

[54] In the case of telephone companies the value of the salvage recovered runs as high as 45 per cent of the original cost of the property. Testimony of Dr. M. R. Maltbie, note 16, *supra*, pp. 1459-60.

[55] Thus, if a unit costs $100, has a service life of 25 years and no salvage value, and the rate of interest is 5 per cent., the charge to operating expense for depreciation in each of the following years would be:

Year	Under Straight Line Method	Under Sinking Fund Method	Under Fixed Percentage of Diminishing Value Method	Under Annuity Method
5th	$4.00	$2.10	$8.05	$2.55
10th	4.00	2.10	3.21	3.25
15th	4.00	2.10	1.28	4.15
20th	4.00	2.10	.51	5.29
25th	4.00	2.10	.20	6.76
The aggregate of the charges in all the years at the end of the 25th year would be:	$100.00	$52.38	$99.00	$100.00

See E. A. Saliers, *op. cit.*, note 11, *supra*, 144, 148, 154, 161.

than the net plant expense for the whole period; because the proceeds of each year's charge are deemed to have been continuously invested at compound interest and the balance is assumed to be obtained from interest accumulations. Other methods of distributing the total charge produce still other results in the amount of the charges laid upon the operating expense of the several years of service.[56]

We have no occasion to decide now whether the view taken by the Interstate Commerce Commission in *Telephone and Railroad Depreciation Charges,* 118 I. C. C. 295 or the protest of the railroads, gas and electric companies should prevail.[57] For in neither event was the Court of Appeals justified in directing an increase in the allowance. The adequacy of a depreciation charge is dependent in large measure upon the practice of the individual concern with respect to its maintenance account. The Commission found that the Railways' property was well maintained and that the allowance of $883,544, together with the usual maintenance charges, would be adequate to keep the property at a constant level of efficiency. It found further, on the basis of the Company's experience, that the charges previously allowed had served "fairly well" to take care of current depreciation and retirements. The

[56]Other methods are: reducing balance; annuity; compound interest or equal annual payment; unit cost; working hour; sum-of-the year-digits. See E. A. Saliers, *op. cit.*, note 11, *supra*, 129-179; R. B. Kester, Accounting Theory and Practice (1918), Vol. 2, 150-186; J. B. Canning, The Economics of Accountancy (1929) 265-309; 81 Am. Soc. Civil Eng. Transactions (1917) 1463-1484.

[57]Nor need we express an opinion on the relation between a utility's depreciation reserve and the valuation of the accrued depreciation of its property. See Proposed Report of the Interstate Commerce Commission, note 14, *supra*, at pp. 20-24. While it is true that the annual depreciation charge does not purport to measure the current actual consumption of plant, it may be that the credit balance in the depreciation reserve is good evidence of the amount of accrued depreciation. See New York Telephone Co. *v.* Prendergast, District Court, S. D. N. Y., decided November 7, 1929. It may also be that so much of the depreciation reserve as has not been used for retirements or replacements should be subtracted from the present value of the utility's property in determining the rate base, on the theory that the amounts thus contributed by the public represent a part payment for the property consumed or to be consumed in service. Compare Burns' Ann. Ind. Stat. (1926), Vol. 3, §§ 12693-12696, p. 1245. These matters are not involved in the case at bar and as to them no opinion is expressed.

depreciation charge was established by the Railways in 1912 and was fixed by it, of its own motion, at 5 per cent. of the gross revenues. The charge at that rate had been continued ever since and had yielded each year an increasing sum. For the gross revenues had grown steadily. In the early years, they grew through increase of the number of passengers carried; since 1919, through the repeated increases in the rate of fare. In nearly every year, the allowance had exceeded the charges for retirements. After charging retirements, whether replaced or not, to the reserve, there remained a credit, on August 31, 1927, of $1,413,793. The allowance of $883,544 is equal to 5 per cent. of the estimated gross revenues for 1928. The increase of this allowance for 1928 over that for 1914 was greater proportionately than the increase of the 1928 value of the Railways' property over its 1914 value.[58]

The estimated charge of $883,544 was thus clearly ample as the year's share of the expense of plant retirement based on cost. But even if the annual depreciation allowance could be made to correspond with the actual consumption of plant, there was nothing in the record to show that the value of the part of plant to be consumed in 1928 would exceed that amount. Nor is there anything in the record or in the findings to show that $883,544, together with the usual maintenance charges and under the improved methods of construction, would be inadequate to provide, at the prices then prevailing, for the replacements required in that year, and also for the year's contribution to a special reserve under the plan advocated by the railroads before the Interstate Commerce Commission. On the contrary, the Company's history[59] and the present advances in the street railway industry strongly indicate that, by employing new equipment of lesser value,[60] the Railways could render more efficient service at smaller operating cost. Neither the trial court nor the Court of Appeals made any finding on these matters. The Commission's finding that $883,544 was an

[58] In determining the reproduction cost of the Company's depreciable property, the Commission applied an index figure of 1.54 to the 1914 value. P. U. R. 1926C, 441, 464. If the depreciation charge for 1914, $469,395, is multiplied by the same index figure, the product is $160,676 less than the allowance originally made for 1928. The additions to plant since 1914, $7,500,000, required a proportional increase in the depreciation charge of only $145,500.

[59] See Re United Rys. & Elec. Co., P. U. R. 1928C, 604, 633-4.

[60] See 73 Electric Ry. Journal (1929) 693, 705, 758, 831, 843.

adequate depreciation charge should, therefore, have been accepted by the Court of Appeals, whether the sum allowed be deemed a depreciation charge properly so called, or be treated as the year's contribution to a special reserve to supplement the usual maintenance charges.

It is clear that the management of the Railways deemed the charge of 5 per cent. of gross revenues adequate. On that assumption it paid dividends on the common stock in each year from 1923 through 1927.[61] If the addition to the depreciation charge ordered by the Court of Appeals was proper for the year 1928, it should have also been made in the preceding five years.[62] Upon such a recasting of the accounts, no profits were earned after 1924; and there was no surplus fund from which dividends could have been paid legally. If the contention now urged by the Railways is sound, the management misrepresented by its published accounts its financial condition and the results of operation of the several years; and it paid dividends in violation of law.[63]

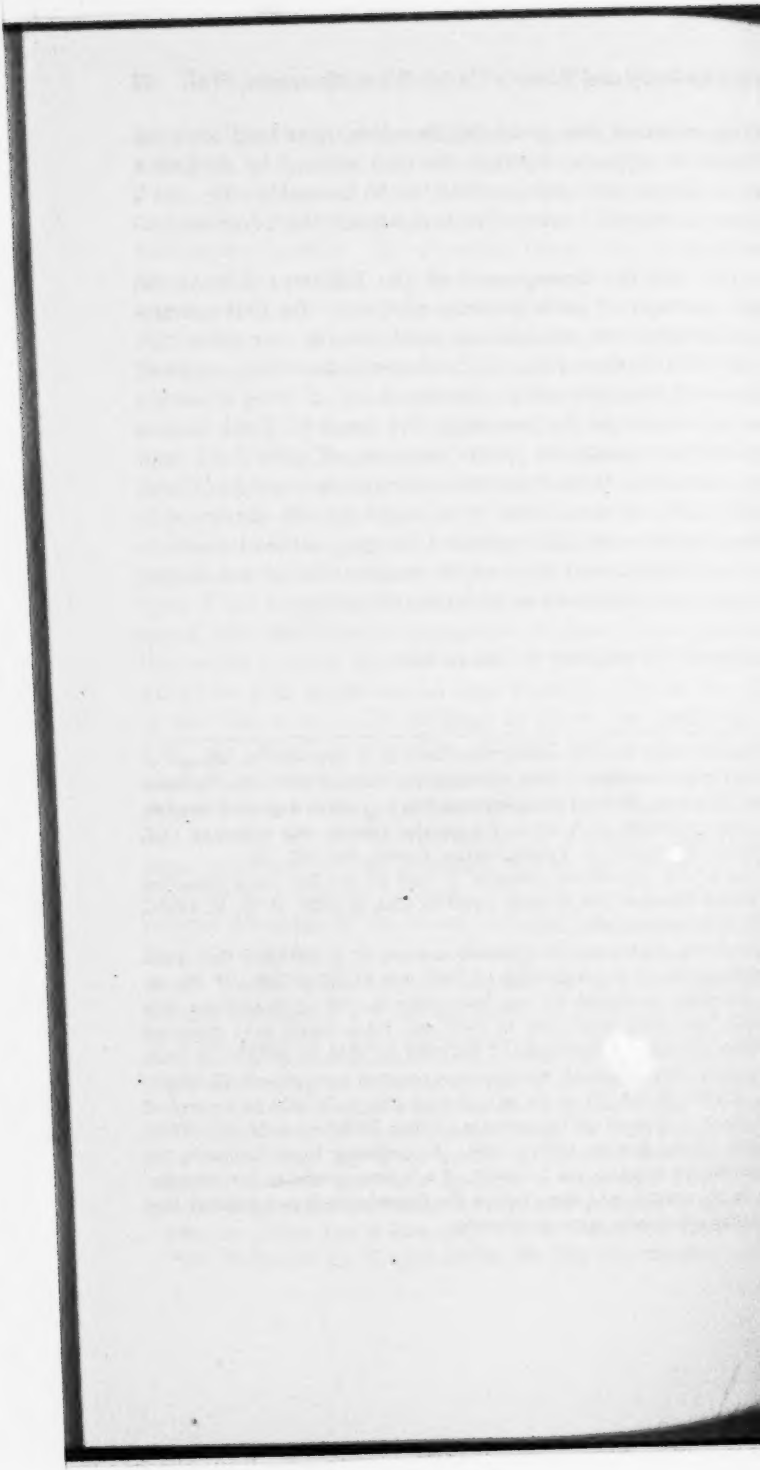
Mr. Justice HOLMES joins in this opinion.

---

[61]The Company was not, of course, restricted to a depreciation charge of 5 per cent. of gross revenues. That was only the amount which the Commission deemed adequate. But the Company was free to reserve a greater amount, without paying dividends, if it believed a greater amount was necessary. Cf. Havre de Grace Bridge Co. *v.* Public Service Comm., 132 Md. 16.

[62]The value of the depreciable property in each of the five years preceding 1928 was almost constant and at least equal to that in 1928, P. U. R. 1928C, 604, 639, P. U. R. 1929A, 180, 183.

[63]In each of those years annual dividends amounting to $818,448 were paid. The recorded surplus at the beginning of 1923 was $1,553,097.83. If the depreciation allowance contended for had been made in each of those years, this surplus would have been wiped out in 1925 and there would have remained a deficit, after payment of dividends of $416,568 in 1925, $1,027,837 in 1926, and $2,140,146 in 1927. Instead, the Railways reported a surplus of $2,005,473 at the end of 1925, $2,020,863 at the end of 1926 and $1,588,823 at the end of 1927. See Moody's Manual of Investments (Public Utilities) 1929, pp. 375-6; Poor's Public Utility Section 1929, p. 968. In declaring these dividends, the management did not overlook the necessity of adequate provision for depreciation. For, in the several rate cases before the Commission it had insisted that the depreciation allowances were inadequate.



SUPREME COURT OF THE UNITED STATES.

Nos. 55-64.—October Term, 1929.

The United Railways and Electric Company of Baltimore, Appellant,
55 *vs.*
Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, constituting The Public Service Commission of Maryland.

Harold E. West, Chairman, and J. Frank Harper and Steuart Purcell, Members, constituting The Public Service Commission of Maryland, Appellants,
64 *vs.*
The United Railways and Electric Company of Baltimore.

Appeals from the Court of Appeals of the State of Maryland.

[January 6, 1930.]

Opinion of Mr. Justice Stone.

I agree with what Mr. Justice Brandeis has said, both as to the propriety of excluding from the rate base the value of the franchise or easement donated to the Railway Company and with respect to the method of ascertaining depreciation. But of this I would say a further word.

I will assume, for present purposes, that as a result of *Smyth* v. *Ames*, 169 U. S. 466, the function of a depreciation account for rate making purposes must be taken to be the establishment of a fund for the replacement of plant rather than the restoration of cost or value of the original plant investment. But what amount annually carried to reserve will be sufficient to replace all the elements of a composite property purchased at various times, at varying price levels, as they wear out or become obsolete, is a question, not of law but of fact. It is a question which must be

answered on the basis of a prediction of the salvage value of the obsolete elements, the character of the articles which will be selected to replace them when replacement is necessary, and their cost at the time of replacement.

Obviously, that question cannot be answered by *a priori* reasoning. Experience is our only guide, tempered by the consideration of such special or unusual facts and circumstances as would tend to modify the results of experience. Experience, which embraces the past fifteen years of high price levels, and the studies of experts, resulting in the universally accepted practice of accountants and business economists, as recounted in detail by Mr. Justice Brandeis, have demonstrated that depreciation reserve, calculated on the basis of cost, has proven to be the most trustworthy guide in determining the amount required to replace, at the end of their useful life, the constantly shifting elements of a property such as the present. Costs of renewals made during the present prolonged period of high prices and diminishing replacement costs tend to offset the higher cost of replacing articles purchased in periods of lower prices. I think that we should be guided by that experience and practice in the absence of proof of any special circumstances showing that they are inapplicable to the particular situation with which we are now concerned.

Such proof, in the present case, is wanting. The only circumstance relied on for a different basis of depreciation, and one which is embraced in that experience, is the current high price level, which has raised the present reproduction value of the carrier's property, as a whole, above its cost. That, of course, might be a controlling consideration if we were dealing with present replacements or their present cost, instead of replacements to be made at various uncertain dates in the future, of articles purchased at different times in the past, at varying price levels. But I cannot say that since prices at the present moment are high, as a result of post-war inflation, a rate of return which is sufficient to yield 7.78 per cent. on present reproduction value, after adequate depreciation based on cost of the carrier's property, is confiscatory because logic requires the prediction that the elements of petitioner's property cannot, in years to come, be renewed or replaced with adequate substitutes, at less than the present average reproduction cost of the entire property—and this in the face of the facts that

the cost of replacements in the past fifteen years has been for the most part at higher price levels than at present, that the amount allowed by the Commission for depreciation has been in practice more than sufficient for all replacement requirements throughout the period of higher price levels, and that the Company has declared and paid dividends which were earned only if this depreciation reserve was adequate.

To say that the present price level is necessarily the true measure of future replacement cost is to substitute for a relevant fact which I should have thought ought to be established as are other facts, a rule of law which seems not to follow from *Smyth* v. *Ames*, and to be founded neither upon experience nor expert opinion and to be unworkable in practice. In the present case it can be applied only by disregarding evidence which would seem persuasively to establish the very fact to be ascertained.